

PATCHED INVESTMENTS

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The publication of this report has been made possible with the support of Kosovo Foundation for Open Society - KFOS. Opinions, findings and recommendations in this report are under the responsibility of KDI and not necessarily present the donor opinions.

**ANALYSIS ON ECONOMIC CONSEQUENCES RESULTING
FROM THE LACK OF ECONOMIC OPERATORS'
PERFORMANCE EVALUATION IN PUBLIC PROCUREMENT**

OCTOBER 2017

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EXECUTIVE SUMMARY

Kosovo citizens continue to face inferior quality services and investments acquisitioned by institutions through public procurement because of poor management by contracting authorities and inferior quality of works or products delivered by contractors. This, in most cases, is a result of failure to fulfil contractual obligations from both institutions and businesses. This is a consequence of tendering at very low prices, with no right calculation of cost and profit margin, but bidding with low prices just to take the works. Economic operators continue to follow this trend to be as competitive as possible in the market of public contracts, whereas on the other hand, the Contracting Authorities stimulate it by not applying consistent measures of contract management, not

applying tender (contract) security, or punishing companies for non-performance.

This analysis reveals the poor management of public contracts, namely inferior quality of capital investments, which are considered as investments with the highest cost, longevity, sustain-

Poor management of public contracts is costing Kosovar taxpayers with service quality and cost, since very often, Contracting Authorities had to award new contracts to “patch” previous investments, instead of making a new investment in any other segment that could improve the living standard of citizens!

ability and visibility, where the main investor is the taxpayer, whereas the main beneficiaries are the citizens. Capital investments are the most expensive contracts in both short-term cost (construction or renovation) and long-term cost (maintenance). Although these investments are very costly, they are very necessary for the citizens’ wellbeing and quality of life. When these investments and contracts are not properly managed, the burden falls on the citizens’ pocket, thus creating the need for extra expenditures that burden the public budget, wellbeing and health.

To further study this issue, we researched three investments (projects): Business Park in Drenas, and



two Schools in the Municipality of Ferizaj, namely “Faik Konica” and “Tefik Çanga”.

The village of Koreticë e Epërme, around 2 km away from Business Park in Drenas, struggles with no potable water and environment pollution, which appeared following the establishment of this Business Park. Field research indicated that this Park is the best evidence that not properly completed works continue to cause big problems to citizens. The hope that such a Park establishment would “ensure employment for more citizens of that area” turned out to be a disappointment for the local inhabitants, ruining two out of four essential elements of life: water and air!

In Ferizaj there are two new school buildings, which from the outer look they create an impression of facilities up to European standards, but once you step inside, the level of works performed reveals construction defects where not even the most essential standards have been met. During heavy weather, the buildings are floated from leakage from roof and windows. The wet floors pose slipping risk to students and staff. At the classrooms near toilets, the awful odour from mould, due to humidity created because of poor installation of water pipes, shortens your breath. During the winter, because of poor installation of central heating, there is no sufficient heating what makes learning process very difficult. Both these schools “Faik Konica” and “Tefik Çanga”, with over 2,500 pupils, share similar problems and have been constructed by the same Company. The school “Faik Konica”, even though it was inaugurated only a year ago, due to poorly managed works by the Ministry of Education, Science and Technology, faces

numerous problems that make the learning and teaching process very difficult. On the other hand, the school “Tefik Çanga”, after 7 years of requesting that difficult working conditions are addressed by the Ministry or the Municipality, only this year benefited additional repairs, however, not all problems have been resolved. Meantime, repairing some of these problems created extra cost for the municipality, who had to reinvest in reinstalling of central heating to prevent the interruption of teaching and learning process.

Article 62 of the Law on Public Procurement¹ defines provisions for contract management activities; however, this Article is not properly addressed, given that institutions, instead of mobilizing contract management teams, they engage only a contract manager, who bears the responsibility for all contract activities.² A manager cannot be considered as expert of all fields, and vesting of all responsibilities to one person increases likelihood for corruption. As a mean for quality control, Article 63 of the LPP foresees the performance security (contract guarantee), which shall be confiscated in case the contractor violates the contract terms. Performance security is a precondition for signing and entry into force of the contract and is 10% of contract amount and in case the contract is not fulfilled, this amount shall be confiscated in its entirety or a part of it, according to the calculation of caused damages.³

This research identified that regardless the technical acceptance of works, the functioning of the facility faced difficulties since the very first year of its operation. These are not the only cases of inferior quality and unfinished works. Sport hall in the

1 LAW NO. 05/L-092 on amending and supplementing the Law No. 04/L-042 on Public Procurement of the Republic of Kosovo, amended and supplemented by the Law No. 04/L-237 and Law No. 05/L-068

2 The same is defined even in the Law No. 03/L-241, Article 81, Contract Management Activities, which was in force at the time when the concerned contracts were awarded, and was repealed with the Law No. 04/L-042 on Public Procurement in the Republic of Kosovo (<http://kuvendikosoves.org/common/docs/ligjet/2010-241-alb.pdf>)

3 This requirement is also defined in the Law No. 03/L-241, Article 61, Performance Security, which was in force at the time when the concerned contracts were granted, and was repealed with the Law No. 04/L-042 on Public Procurement in the Republic of Kosovo (<http://kuvendikosoves.org/common/docs/ligjet/2010-241-alb.pdf>)



Municipality of Shtime is a project that commenced seven years ago by the Ministry of Culture, Youth and Sports, and is still uncompleted. This fact made many clubs (teams) from this city to conduct trainings at open spaces and at schools that have sport facilities, and after many complaints from the municipality, the works for finalization and renovations of the sport hall facility commenced in 2017, thus creating additional costs due to the amortization of initial works.

Whereas, according to the interviews with busi-

nessmen operating in Plateau in Kurriz, Prishtina⁴, reports in media and GAP institute, the problems in implementing this project caused 8 entrepreneurs to close their business due to difficult conditions for operation.

Though this report, KDI will address recommendations to all budgetary organizations to be more attentive in contract management and ensure that they use the legal remedies to punish all Economic Operators who do not respect the contract terms and conditions.

⁴ Interview with entrepreneurs operating at Kurriz (identity known for KDI), 18 October 2017.

RECOMMENDATIONS

Findings of this research reveal the urgent need to intervene in several levels, both in legislative and procedural level. As a result of this research, Kosovo Democratic Institute (KDI) recommends that:

1. Public Procurement Regulatory Commission shall start procedures and research for amending/supplementing the law and administrative instructions with regards to:
 - a. Contract management process
 - b. Suppliers management process
 - c. Procedures for evaluation and reward/penalization of Economic Operators for completed contracts.
 - d. Procedures for Supplier Relationship Management
 - e. PPRC shall establish procedures and assume the responsibility for approving the assignment of contract manager, or contract management teams, pursuant to work complexity.
2. Institutions shall enhance responsibility and observance of the Law by applying the contract security for uncompleted works or poor-quality works, as mean for punishing irresponsible Economic Operators, thus saving public funds;
3. Government institutions shall open data which would facilitate active engagement of citizens` in identifying problems and strengthening institutional and business accountability against loss of public funds through means of social accountability.
4. Contract managers shall be held responsible for poor management, in compliance with the legal provisions for civil servants.
5. Commission for technical acceptance shall be held responsible for accepted works upon project completion.

LIST OF ABBREVIATIONS

CA	–	Contracting Authority
MED	–	Municipal Education Department
DCYS	–	Department of Culture, Youth and Sport
KDI	–	Kosovo Democratic Institute
PPRC	–	Public Procurement Regulatory Commission
LPP	–	Law on Public Procurement
MEST	–	Ministry of Education, Science and Technology
MTI	–	Ministry of Trade and Industry
MCYS	–	Ministry of Culture, Youth and Sport
MESP	–	Ministry of Environment and Spatial Planning
EO	–	Economic Operator
NGOs	–	Non-Governmental Organizations
CSOs	–	Civil Society Organizations
BPD	–	Business Park Drenas
NAO	–	National Audit Office

INTRODUCTION

The purpose of this report is to analyse consequences suffered by the citizen because of poor works during the public contracts implementation, as well as to prove control and management of works by the institutions must be addressed.

This report, through contract analysis, state of capital investments, and proofs by citizens, shows that the caused damages remain uncompensated and cause long-term consequences to the health and family budget. The report outlines also the problems related to technical acceptance of projects being only a formality, the oversight of works by the project managers has yet be taken seriously, and Economic Operators are not punished for their deficient performance. The only stakeholder punished in this process is Kosovar citizen, through an increased cost of living!

For many years now, numerous researches from Civil Society Organizations, independent media, and National Audit Office, have identified hundreds of cases of violations of contract terms and neglect of quality by EOs, which are not punished or held responsible for these violations. Due to the lack of legal provisions for contract performance assessment, these EOs are not punished, in contrary they are yet awarded with new public contracts.

Kjo ndihmon për t'u siguruar se qeveria bën biznes me kompanitë, të cilat japin mallra dhe shërbime cilësore në kohë dhe brenda buxhetit dhe gjithashtu ndihmon në përmirësim të kualitetit në kontratat aktuale. Po ashtu, me një theks të veçantë në kontratat

afatgjata, është një mënyrë e mirë për të siguruar se kontraktori e kupton plotësisht atë që qeveria dëshiron dhe mund të përmirësojmë qasjen e tij/saj drejt përbushjes së suksesshme të obligimeve kontraktuale. Gjithashtu, vlerësimi i performancës shërben si bazë për përcaktimin e çmimeve reale dhe siguron informacionin e nevojshëm për zyrtarin kontraktues për të mbështetur vendimet për kontraktorët e mundshëm.

KDI believes that, now, when institutions are shifting to a more advanced stage of public procurement, it would be easy and reasonable that Procurement Office, Finance Office and Contract Management Office establish a contract performance evaluation system, by use of existing examples from European countries or beyond, proved to be successful, to create a new platform, supported with secondary legislation, as part of contract management.

A contract evaluation process would impact the awareness of Economic Operators, as well as would make Contracting Authorities more responsible in implementing contracted works and contracting new works. Government Agencies rely on contractors to perform a wide range of activities necessary to fulfil their missions. Evaluation and collection of information on the work of contractor are a mean to protect the government (ultimately the citizen) from the low performance and to enable the reward of good contractors with more work. This helps in ensuring that the government

does business with companies who provide qualitative goods and services on time, and helps in improving quality of current contracts. Also, with a special emphasis on long-term contracts, it is an effective way to ensure that the contractor fully understands what government wants, and may improve its approach towards the successful fulfilment of contractual obligations. Also, performance evaluation serves as the basis for determining real prices and ensures necessary information for the contracting officer to support its decisions for potential contractors.



METHODOLOGY

This research uses a mix methodology, with an emphasis on the quality analysis through the application of primary sources as documents analyses, interviews with citizens and experts, focus groups and secondary sources by reviewing the literature (existing analyses and reports), which are familiar for the citizens.

KDI selected several high value capital projects for research, projects well-known to the public through media reporting, and from citizens' complaints, focusing mainly on the quality of completed works.

Field research and observation of these projects proved that the management and supervision for projects selected for research have not been implemented in compliance with the contract terms.

Interviews with citizens are the most important part of our research, the citizen is the best witness to show the factual situation given that everyday they face the failure of institutions or non-implementation of contracts.

Interviews with institutional officers have been inevitable because they hold the main responsibility for poorly executed works.

Also, to present the inconvenient situation due to contract implementation, KDI referred to a series of reporting from media and Civil Society Organizations, which presents the situation of these investments and problems faced by citizens because of them.

KDI, through Access to Public Documents,²³ has analysed tender dossiers, bids of the Eos "awarded" with contracts, contract management register, technical acceptance assessment of buildings, as well as receipts paid for each lot of the contracts, as a part of this research.

As a tool to this research, we organized a focus group with NGOs and Media, aimed at their input and sharing their experiences in the field of public procurement, specifically shortcomings in contract implementation and damages caused from poor execution of infrastructure projects.



ANALYSIS

LACK OF PUBLIC CONTRACTS ASSESSMENT RESULTS IN DAMAGES FOR CITIZENS – CASE STUDY

1.1. Primary School “Tefik Çanga” Ferizaj

Part of the field research are two schools in the Municipality of Ferizaj, who face almost similar technical problems because of poor works. Also, problems and consequences which the citizens are suffering as a result of poorly implemented contract in construction of the Business Park in Drenas have been selected as another case study.

The reason behind selecting these two schools was not a coincidence; Secondary School of Economics “Faik Konica” and Primary School “Tefik Çanga”, in Ferizaj. Both these schools, since their first year of putting into operation, face numerous facility problems, and both have been constructed by the same Company.

The company which constructed these two schools has also constructed and repaired four other

schools, in the amount of 4,999,621.59 €⁵⁶⁷⁸⁹¹⁰¹¹ from Kosovo’s budget.

On the other hand, the Business Park in Drenas continues to have problems with sewerage and waste water treatment.

The construction of waste water treatment plant costed to the Kosovo budget 611,866.26 €¹²¹³¹⁴ and problems have not been solved yet, and the citizens are the ones who suffered the most from these problems, namely face the problem of water and air pollution.

KDI visited closely these projects and after comparing the works performed, which have not been in compliance with the contracted terms and conditions, identified the loss of thousands of Euros from the budget as a result of unfinished works and repairs of the same.

5 Contract Award Notice, MASHT208-08-043-5-1-1, dated 19.06.2008 <https://krpp.rks-gov.net/Default.aspx?PID=Notices&LID=1&P-CID=-1&CtIID=ViewNotices&ID=7749>

6 Contract Award Notice, MASHT208-08-046-5-1-1, dated 26.06.2008 <https://krpp.rks-gov.net/Default.aspx?PID=Notices&LID=1&P-CID=-1&CtIID=ViewNotices&ID=7899>

7 Contract Award Notice, MASHT208-08-101-5-1-1, dated 18.10.2008 <https://krpp.rks-gov.net/Default.aspx?PID=Notices&LID=1&P-CID=-1&CtIID=ViewNotices&ID=12012>

8 Contract Award Notice, MASHT208-09-096-5-2-1, dated 07.09.2009; <https://krpp.rks-gov.net/Default.aspx?PID=Notices&LID=1&P-CID=-1&CtIID=ViewNotices&ID=22549>

9 Contract Award Notice, MASHT208-09-120-5-1, dated 09.10.2009 <https://krpp.rks-gov.net/Default.aspx?PID=Notices&LID=1&P-CID=-1&CtIID=ViewNotices&ID=24038>

10 Contract Award Notice, MASHT208-12-064-5-2-1, dated 12.10.2012 <https://krpp.rks-gov.net/Default.aspx?PID=Notices&LID=1&P-CID=-1&CtIID=ViewNotices&ID=24038>

11 Refer to the document in hard copy for the tender Contract Award Notice, MTI204-09-096-5-1-1, dated 16.10.2009 <https://krpp.rks-gov.net/Default.aspx?PID=Notices&LID=1&PCID=-1&CtIID=ViewNotices&ID=24283>

12 Contract Award Notice, MTI204-10-055-5-2-1, dated 17.06.2010 <https://krpp.rks-gov.net/Default.aspx?PID=Notices&LID=1&P-CID=-1&CtIID=ViewNotices&ID=32114>

13 Contract Award Notice, MTI204-15-008-5-2-5, dated 08.07.2015 <https://krpp.rks-gov.net/Default.aspx?PID=Notices&LID=1&P-CID=-1&CtIID=ViewNotices&ID=102467>

14 Contract Award Notice, MTI204-09-088-5-1-1, dated 15.07.2014 <https://krpp.rks-gov.net/Default.aspx?PID=Notices&LID=1&P-CID=-1&CtIID=ViewNotices&ID=22929>



CASE 1:

CONSTRUCTION OF 25 MODEL SCHOOLS BY THE MINISTRY OF EDUCATION, SCIENCE AND TECHNOLOGY

Procurement process for construction of the primary and low secondary school “Tefik Çanga” in Ferizaj commenced in October 2008, and amounted to €1,182,589.11.¹⁵ This school was inaugurated in 2010 and final beneficiaries (teachers and students) since the beginning faced various technical problems with this building. Technical acceptance of this school facility took place in 2009 by the Commission for Technical Acceptance, together with Construction Company and contract manager, concluding that all lots requested in contract were completed.

The school facility became “operational” in September 2010 and following the observance of school staff; several irregularities were identified in its construction, potholes at school entrance, flooding at basement, the floor was ruined in several classrooms, ventilations for heating pipes was leaking, as well as other similar problems.¹⁶

In January 2015, soon as school staff came in noticed that in second and third floor there was water in the floor from the roof as a result of snowing. In order to not interrupt the teaching process, parents and school staff mobilized to fix the damage, but due to the water that covered the floors of corridors, there was a risk of being injured due to slippery floors. Also, the risk could come from failure in electric installations due to dampness in cables, as well

as the plaster could fall down and cause injuries as a result of high dampness.¹⁷

The Municipal Education Department in Ferizaj was aware of these problems which the school faced. However, they failed to take any action as MEST, as project funder, was responsible, and that MEST Commission technically accepted the works without involving any commission member coming from MED in Ferizaj.¹⁸

“Tefik Çanga” school management submitted the same complaints to MEST each year, while in 2016, through a request submitted to the MED in Ferizaj, requested urgent rehabilitation of the roof and of the central heating because it was impossible for the teaching process to take place.¹⁹

Through the project 2010-2017 for investments and renovations in schools of Ferizaj, MED in Ferizaj allocated €16,392 for re-installation of the central heating in the school “Tefik Çanga”.

In 2017, MEST finally concluded a new contract for repairing damages in the school “Tefik Çanga” Ferizaj, in the amount of €38,827.90.²⁰

During the visit of KDI team at the school “Tefik Çanga”, upon an interview with the contractor for

15 Contract Award Notice, MASHT208-08-101-5-1-1, dated 18.10.2008 <https://krpp.rks-gov.net/Default.aspx?PID=Notices&LID=1&P-CID=-1&CtlID=ViewNotices&ID=12012>

16 Data on the current state of the school, document No. 143 dated 02.09.2010 from the Primary School “Tefik Çanga” management office.

17 Urgent request with protocol no. 627, dated 13.01.2015, submitted to MED by the School Directorate.

18 Report no.07/532, dated 31.08.2017, for KDI from MED in Ferizaj.

19 Request No. 930 submitted by School “Tefik Çanga” Management office to MED in Ferizaj on 06.09.2016

20 Contract Award Notice, MASHT208-17-003-5-2-1, data 11.05.2017. <https://krpp.rks-gov.net/Default.aspx?PID=Notices&LID=1&P-CID=-1&CtlID=ViewNotices&ID=139835>



repairing damages, it was understood that with the contracted amount of €38,827.90 it was impossible to repair all damages, but only few of them. According to the terms of contract for repairing damages, it was requested the roof isolation – there was no isolation in the past – installation of gutters –no gutters were installed in several parts of the roof – painting the building inside and outside, as well as repairing several water pipes.²¹ Also, it was noticed that this school had other problems, as poor installation of water pipes, resulting in continuous water leakage. These problems were noticed even in moulded walls, namely walls of toilets and corridors, as well as classrooms near toilets.²² According to the school management, the installation of new pipes in toilets will be funded by MED of Ferizaj.

With regards to the concerned contract, MEST provided no response to the KDI request for Access to Public Documents²³ to analyse the payments and verify whether the contract security was executed for unfinished works or poorly performed works.

1.2. School of economics “Faik Konica” Ferizaj

Secondary School of economics “Faik Konica” in Ferizaj is another facility, which is considered as a subject matter for this analysis. This school was

inaugurated on 05 September 2016.²⁴ The construction project of this school was awarded in 2009 from MEST, in the amount of € 1,964,354.43.²⁵ This facility, since the first year of functionalization went through various technical problems due to poor construction quality. Problems in this school can be placed on a lengthy list, starting with poor water supply installation, poor central heating installation, roof leakage, and many other issues.

The KDI team has also visited this school²⁶ and has closely identified the damage caused because of the poor construction by the contractor. It is only one year when the school became functional, and the damages are so large that the municipal or central government needs to make additional investments to repair the damage caused by the poor work performance by EO and the lack of responsibility of project supervisors.

During the interview, the director of this school emphasized that before starting the teaching process for 2016/2017, they have evidenced all the defects of the facility. He also noted that until now, he did not receive any minutes from any commission on the technical approval of the facility.²⁷ Some of the issues faced by the school “Faik Konica” are the same with the school ‘Tefik Çanga’.

Type of work	Amount
School construction	1,182,589.11 €
Repairing central heating	16,392 €
Repairing the roof and other damages	38,827.90 €
TOTAL ADDITIONAL COST FOR PATCHING THE INVESTMENT	55,220.00 €

21 Visit to the school “Tefik Çanga”, interview with the Damage Rehabilitation Contractor, Ferizaj, date 21.08.2017

22 According to the ORL Otorhinolaryngology Specialist Dr. Ilir Ilazi, mould in some cases is very harmful to the human body depending on his immunity, to some people mould is not a big problem, but to some others it irritates the respiratory organs, to some cause allergies, and are very dangerous, especially when staying for a long time in such an environment.

23 Request for access to public documents, submitted on 16.08.2017

24 <http://archive.koha.net/?id=8&l=131354>

25 Notice of contract award, MEST208-09-120-5-1-1, date 09.10.2009 <https://krpp.rks-gov.net/Default.aspx?PID=Notices&LID=1&P-CID=-1&CtID=ViewNotices&ID=240387>

26 Visits in the field, of dates 15.08.2017, 21.08.2017 31.08.2017 and 04.09.2017

Interview with the principal of the secondary school of economics “Faik Konica” Ferizaj, date 21.08.2017

27 Interview with the principal of the secondary school of economics “Faik Konica” Ferizaj, date 21.08.2017



Poor water supply network – water leakage from pipes caused dampness, the consequence of which was seen by the fall of the mortar from the walls of the facility inside and the mould odour that was caused by high humidity.

Poor Central Heating Installation- According to school administration, due to poor central heating installation, during the winter season when heating system is on, the water leaks from the pipes and the heat does not circulate to some radiators. Some spaces within the school, including the director’s office, are cold and unusable during the winter season. According to the school facility maintainers, the water leakage out of the pipes of the central heating causes problems with the pump, which they, constantly must fill with water and there is a risk that it may be damaged.

When talking about central heating, the problem is not only leakage from the pipes. The school furnace (burner) connected to the chimney has constant difficulties of not up-taking smoke, so the entire burner room is black from smoke. Maintenance workers have stated that the constant smoke coming out of the burner will affect their health and that the lack of ventilation and continuous smoke up-take, which under normal conditions would have to be discharged through the chimney outside the burner facility.

According to the school director, upon the rainfall season in 2016, there has been leakage of water within the school facility, the wrong placement of the gutters caused the leakage of water even to the outer walls of the facility where spots and cracks were

noticeable on the facade, and as a consequence of these leaks combined with the climatic conditions (frosts) can result in the destruction of the facade and insulation of the facility.

The numerous complaints addressed to MEST through the MED of Ferizaj did not bring any benefit to repair the damages.

Despite the issues faced by the “Tefik Çanga” school, and MEST was aware of them, they awarded the same company with another contract, which instead of being punished for violation of contractual terms, they have been “rewarded” again with another contract.

After publishing in the media about the problems faced by this school, the school was visited by a commission from MEST and MED of Ferizaj, but so far, no actions have been undertaken²⁸ to mitigate the existing situation.

As in the aforementioned case, MEST²⁹ did not respond to the request to allow access to public documents to have a look at the worksheet completed by the project manager in order to analyse whether any of these issues and irregularities have been identified by the contract manager.

28 Meeting with school management 31.08.2017
29 Request for access to public documents of date 16.08.2017; MEST is contacted by phone no. 25.08.2017 and 31.08.2017



CASE 2: BUSINESS PARK IN DRENAS

Another prolonged story of an infrastructure project with same problems is the construction of the Business Park in Drenas by the Ministry of Trade and Industry (MTI).

The purpose of this park was to regulate infrastructure for foreign and local investors, whereby the citizens of that area would benefit out of these investments as potential individuals to be employed. However, that park sustained material damages, despite the fact that the project cost millions of euros.

The biggest issue faced by residents of this area from the construction of this park is the failure to complete the sewage system, which has caused side damage, with special emphasis on water supply. The operation of this park, in the last three years, has begun to cause problems to the inhabitants of the village Koreticë e Epërme, which is located about 2 kilometres away from this park.

The river “Kroi i Mbretit” near houses of the inhabitants from which they were supplied with usable water, began to be polluted by the wastewater discharged to the river. This is due to the fact that the pipes of the sewage network were not completely placed to the main network.

Previously, the inhabitants of this village were supplied with water from open wells in the absence of the water supply network, but those wells are now unusable due to contaminated underground water pools.

In December 2015, MTI had requested to test the water from the natural source, and from the water tests conducted by the Prishtina Regional Water Company, based on the samples examined and based on the Standards for Surface Waters, it was found that these waters are, chemically, non-potable waters, i.e. of category II, which could only be used for technical needs such as watering, washing the roads, etc.³⁰

According to the residents, except the wastewater discharged to the river, there are industrial waste from industrial products such as plastics and other chemical wastes.

Since the beginning of the construction of this Park, only for construction, treatment and maintenance of the sewage plant, during the 6 year period, have been concluded four contracts but not all issues have been yet solved.

The first contract for the construction of sewage treatment plant was awarded in October 2009³¹ in the amount of 902,779.70 €, which was terminated due to property disputes that were the responsibility of the Municipality of Drenas.³²

Prior to the implementation of the contract, MTI paid to the company € 90,277.98 as advance payment or 10% of the amount of the contract for starting the works.

The company started the works on the site in May 2010 and until the finalization of contract accord-

30 Document No.3429 from the laboratory of RWC Prishtina, Water Quality Department, date 08.12.2015

31 Notice of contract award, MTI204-09-096-5-1-1, date 16.10.2009 <https://krpp.rks-gov.net/Default.aspx?PID=Notices&LID=1&P-CID=-1&CtIID=ViewNotices&ID=24283>

32 Memorandum of Cooperation between MTI and Municipality of Drenas, date 21.07.2005

wastewaters in the fields from the company responsible for the maintenance of the Business Park in Drenas.

The Ministry of Trade and Industry in February 2016 has contracted a private company for the maintenance of the Business Park in Drenas, amounting to €12.990.00³⁹ which was responsible for cleaning the waste at the wastewater and industrial treatment plant, as well as the removal of remains and other wastes from the plant to the legal landfills, and this company has disposed such wastes at the meadows of the village.

Inspections were also carried out by the Ministry of Environment and Spatial Planning in March 2017, whereby it fined the company with 100.00 €, and a fine for that company has also been imposed by the Ministry of Trade and Industry in the amount of 70.00 €. MTI also emphasized that the cleaning contract expired to this company, now BPD is cleaned by another company which is continuously monitored by the Ministry of Environment and Spatial Planning and by the Ministry of Trade and Industry.

The fined company again submitted its bid for the new contract for the waste management of the Business Park in Drenas, but the Ministry of Trade and Industry has not 'rewarded' it with another contract due to the breach of the contractual terms of the previous contract, despite the fact that it bid with lowest price.

In the village Koreticë e Epërme, 2 km near the Business Park in Drenas, live 15 families. Each of these families has been materially damaged as a result of construction of the business park, making it difficult for them to make a living, and at the same time created additional expenditure on family budgets for essential products or supplies.⁴¹

Due to the damage caused by the BPD wastewaters, the inhabitants of Koreticë e Eperme village commute on daily basis for 8 kilometres to get supplied with drinking, cooking or personal hygiene water!

The Environmental Inspectorate of the Municipality of Drenas in February 2017 inspected the work of the company and it was established that the company responsible for cleaning the Business Park in Drenas has collected the wastes from the BPD and disposed them into puddles which passed to the underground wells and flowed into the water wells and polluted the household water.⁴⁰

Due to water pollution, the fifteen families of Koreticë e Epërme village, for 3 consecutive years, are forced to be supplied with drinking, cooking and hygiene water from various sources. One of the main sources is the natural spring, which is about 4 kilometres away from the village. These families travel about 8 kilometres a day to get water. If we get an average spending of 6 liters per 100 kilome-

39 Notice of contract award, MTI204-16-061-2-2-1, date 29.02.2016 <https://krpp.rks-gov.net/Default.aspx?PID=Notices&LID=1&P-CID=-1&CtID=ViewNotices&ID=113481>
40 Report No.13017 for discharge of wastewater outside the plant, by the Inspection Directorate, Municipality of Drenas, date 10.03.2017
41 Surveys from the field, interviews with inhabitants of village Koreticë e Epërme, Drenas, date 17.08.2017



tres and an average price of € 1 per petroleum (petrol), it results per day these families spend about € 0.48 and € 175 per year in order to be supplied with water. For three consecutive years, the family budget has been aggravated by about € 525.6 only for petroleum.

Through a free line 0800 77777, a beekeeper from this village reported to KDI, who had cultivated honey for sale, reported that as a result of unclean environment his bees died two years ago. He has lost 10 beehives, and one beehive costs approximately 100 €, or total 1,000.00 €. The inhabitant cultivated on annual basis 100 kg of honey out of these bees, which he then sold for 10.00 € per kilogram. His family's income, upon the death of his bees, has been reduced by about € 1,000.00 a year, meaning that for two years, this family lost incomes from around € 2,000.00.

OTHER CASES OF THE LOSS OF PUBLIC FUNDS DUE TO POOR CONTRACT MANAGEMENT

Identified cases of poor contract management and poor performance by Economic Operators have been found during the focus group organized by KDI,⁴² in view of addressing this problem.

3.1. Sport Centre in Shtime

One of the cases identified during this focus group is the case of the sports centre in Shtime Municipality. Disputes between the Contracting Authority and the

Economic Operator for the construction of the sports centre in Shtime municipality left the project incomplete for almost 5 years. This project started in 2010 funded by the Ministry of Culture, Youth and Sports, and amounted to €1,864,699.70. According to the Directorate of Culture, Youth and Sports of Shtime Municipality, the facility has remained incomplete because the construction company has accused the respective Ministry for failure to allocate funds for extra work.

According to the Directorate of Culture, Youth and Sports of the Municipality of Shtime, the new contract for repair and functionalization of the sport centre amounts to €400,000.00 which besides the completion of the unfinished works, also foresees the fixing of damages caused.

The Municipality of Shtime has consistently made efforts to make this facility operational but has not been supported by MCYS. At the beginning of 2017, the Ministry of Culture, Youth and Sports finally agreed to complete the facility and to make the sport centre operational through the award of a new contract for which contract procurement procedures were run by the municipality itself, while

⁴² Focus group held on 18.08.2017, in KDI offices





Municipality of Prishtina reported concerns related to this project. The Audit Report for the Financial Statements of 2015 for the Municipality of Prishtina emphasizes that related to the project “Construction of the boulevard at Kurrizi” amounting to € 977,726, the municipality had signed a contract including the position for the project design after the execution. In this way double contracting was made for the same service, since the municipality designed these projects before the commencement of the execution procedure.⁴⁵ In the Audit Report for the 2016 Financial Statements for the Municipality of Prishtina, the NAO again reported concerns about the same project, but this time the auditor stresses that the municipality did not have any funds allocated to the project in question but it provided the funds from another infrastructural project and according to the auditor, such a situation would reduce the effective implementation of planned capital expenditures and incorrect reflection of projects carried out within the category of capital investment.”⁴⁶

Various media reported during the period 2016-2017 that due to incomplete and poor works, residents complain that whenever there is raining, they face water flooding problems at the premises and corridors of the shopping centre at Kurrizi.^{47,48,49} The problem with this project was also identified in the NGO GAP report, published in 2017, which analyses the current problems of the municipality of Pristina. This report also noted that the delays in the

implementation of this project had posed a risk to residents, especially children living near this facility complex, as well as numerous complaints from businesses operating in this complex for financial losses as a result of damages to the premises from the penetration of rain and rainfall beyond the plateau.⁵⁰ KDI talked with businessmen operating in the area who said that as a result of the problems with the implementation of this project; so far 8 entrepreneurs have closed their businesses.⁵¹

3.3. Various reports of problems faced by citizens as a result of poor road construction

The problem with the quality of works carried out on Kosovo’s roads seemed like an epidemic of alarming dimensions. It is a problem faced by citizens around the country, and where the taxpayer’s money is mostly lost by paying several times for the same projects. Lack of work quality will cause citizens to pay again for works that should have had several years of warranty rather than few months.

The local news agency Veriu.info in July 2017 reported a miserable road situation in Skenderaj, which immediately after pavement were damaged as a result of lack of quality and failure to meet the required standards. According to the same source, this was due to the fault of the Contracting Authority, who had contracted companies known to them for no capacities or for history of poor work performance.⁵²

45 Audit report No.20.0.1-2015-08, for financial statements of the Municipality of Prishtina for the year ended on 31 December 2015 from NAO, Prishtine, June 2016

<http://www.zka-rks.org/wp-content/uploads/2017/06/RaportiAuditimit.KPR.2015.Shqip.763234.pdf>

46 Audit report No.22.0.1-2016-08, for financial statements of the Municipality of Prishtina for the year ended on 31 December 2015 from NAO, Prishtine, June 2017

file:///C:/Users/Admin/Downloads/Prishtina_KPR.2016.Shqip.50520.pdf

47 Klan Kosova: Kjo është gjendja pas shiut në Prishtinë, 2 September 2016: <http://klankosova.tv/kjo-eshte-gjendja-pas-shiut-ne-prishtine-video/>

48 Gazeta Express: Zvarritje dhe punime jociësore në “Kurriz”, thyhen kubëzat e qelqit, 5 September 2017: <http://www.gazetaexpress.com/lajme/zvarritje-dhe-punime-jocilesore-ne-kurriz-thyhen-kubezat-e-qelqit-429595/>

49 Infokusi: Ankohen qytetarët e lagjës “Dardania” për vonesën e punimeve mbi ‘kurriz’ 11 October 2016: <http://infokusi.com/old/ankohen-qytetar-et-e-lagjes-dardania-per-vonesen-e-punimeve-mbi-kurriz-video/>

50 GAP Institute: Municipality of Prishtina 2017: Main issues and budget trends, 2017, p.2

51 Interview with entrepreneurs operating in Kurriz (known identity for KDI), 18 October 2017.

52 Veriu.Info: Shumica e rrugëve të asfaltuara në Skenderaj u demtuan për shkak ndërtimit të dobët, 16 July 2017, <http://www.veriu.info/shumica-e-rrugeve-te-asfaltuara-ne-skenderaj-u-demtuan-per-shkak-ndertimit-te-dobet>, <http://www.veriu.info/shumica-e-rrugeve-te-asfaltuara-ne-skenderaj-u-demtuan-per-shkak-ndertimit-te-dobet/>



Theranda Post, another local news agency, in February 2017 reports a serious condition of the streets of city Theranda (Suhareka). In the following, Theranda Post contacted the Department of Public Services and Emergency, according to which the problems were as a result of the work by a private company who would have to return to the previous situation⁵³. However, in May 2017, the same news agency had published a second media article reflecting and reacting to the very bad road situation in Suhareka, where as a result of poor quality works, featuring potholes, slides and cracks of roads, sidewalks and drainage system.⁵⁴

The "Muharrem Fejza" street in Prishtina was repaired in 2012, and again in November 2016, after having completed the placement of the underground power cables, however, in May 2017, according to a report by Lajmi.net, was in a miserable condition. The overloaded traffic and the poor quality of the works caused the asphalt to dissolve and the pavement and road to slide.⁵⁵ KTV had produced a reportage titled "Potholes on the road", featuring difficult condition of many streets in the capital city. Although the municipality has a one-year framework contract for road rehabilitation, road conditions are still severe.⁵⁶

Gazeta Express portal, on 4 July 2017, reported that the paved asphalt only two days ago on street "Rrugën e Flamurit" near the primary school "Lekë Dukagjini" is dissolving due to poor quality.⁵⁷

Portal Kallxo.com, part of network BIRN, reports on the demolition of asphalt on highway Gjakovë-Pejë,

within 24 hours after it was paved.⁵⁸ The same media, reports about a serious situation on the road to Rugova Gorge, featuring potholes created exactly at places where repairs were made.⁵⁹

A similar situation is reported for streets of Gjilan, where as a result of poor works, few months after asphaltting, a road at neighbourhood "Gavran" the asphalt is already dissolving and covered with potholes.⁶⁰

According to Portal "Gjilani Ynë" the road Gjilan-Bujanoc, total cost €900,000, and only few months after it is repair, already damaged and there were potholes everywhere.⁶¹

All of these problems cause difficulties in the livelihoods and activities of citizens by increasing the costs to the family budgets such as increased fuel costs, vehicle amortization, risk of accidents between passengers, pedestrian accidents, and so on. What is concerning that citizens pay, re-pay and extra-pay for services they do not receive or receive but in second or third-class quality, such as lack of proper management of contracts, and in particular as a lack of institutional and business/ implementation accountability!

Although reporting on contract management problems continues to be a day-to-day matter, especially in capital investment, where the cost of the public budget for repairs as well as the cost of family budgets is very large, this problem has still remained unaddressed and unresolved by our institutions.

53 Theranda Post: Kanal e gropa midis qytetit të Suharekës 14 February 2017

54 Theranda Post: Po gropat, kur do të rregullohen? 08 May 2017

55 Rrugë 6 muajshe: Ky është standardi i të shtruarit asfalt i Shpend Ahmetit (Photo), Prishtina published on the portal www.lajmi.net, date 03.05.2017

<http://lajmi.net/rruga-6-muajshe-ky-eshte-standardi-i-te-shtruarit-asfalt-i-shpend-ahmetit-foto/>

56 First Channel TV: Rrugët e Prishtinës gropa-gropa, 6 June 2017, <http://www.first-channel.tv/2017/06/06/rrugjet-e-prishtines-gropa-gropa-video/>

57 Gazeta Express: Ndodh edhe kjo: Rrugë e asfaltuar para dy dite, prishet në Prizren, 4 July 2017, <http://www.gazetaexpress.com/lajme/ndodh-edhe-kjo-rruga-e-asfaltuar-para-dy-dite-prishet-ne-prizren-video-399017/>

58 Kallxo.com: Prishet Asfalti pa i Mbushur 24 Orë, 26 May 2017, <http://kallxo.com/prishet-asfalti-pa-mbushur-24-ore/>

59 Kallxo.com: 'Arnimi i Shqyer' i Rrugës drejt Rugovës, 30 May 2017, <http://kallxo.com/arnimi-shqyer-rruges-drejt-rugoves/>

60 IndeksOnline: Prishet asfalti në Gjilan, pak kohë pasi u shtrua, 27 July 2017, <http://indeksonline.net/lajmet/prishet-asfalti-ne-gjilan-pak-kohe-pasi-u-shtrua-foto-113030/>

61 Portal Gjilani Ynë, 31 May 2013: <https://www.facebook.com/gjilaniyne/posts/509039489219864:0>

But what remains the most worrying is the neglect of quality of work, which not only increases the cost of maintenance, but especially with capital investments, also endangers the lives of citizens.

According to the Chartered Institute of Procurement and Supply-CISP, contract management is a continuous procurement process that ensures suppliers - and buyers - adhere to their agreed contractual obligations, along with negotiating any future changes that need to take place.⁶³

According to the same Institute, supplier performance monitoring is a key aspect of supply procurement and management, but it can easily be underestimated, with the lack of necessary resources and neglected.⁶⁴ When performance is monitored following the contract award, the purpose is twofold:

- a) ensure that the supplier is fulfilling performance criteria, e.g. service rate and quality, conditions set in the contract, and
- b) identify opportunities for improvement.

According to a survey carried out by the International Commercial and Contract Management Association, good contract management would be translated in approximately 9% savings for institutions and around 9% revenues for companies. For companies is seen as revenue because in case of good performance, then there is a potential to win other tenders based on references for performed works.

Current legal provisions in Kosovo do not address this key component of monitoring the performance, in contract management activities. Due to the lack of rules for regulating and implementing this component, Economic Operators, due to the lack of contract management, continue to work with very low standards and quality-less, and despite all accusation from public against institutions, these economic operators continue to work and get rich from the citizens money and at the expense of citizens. On the other hand, for serious suppliers, poor contract management would be very frustrating and thus losing the trust in institutions, and therefore withdraw from the public procurement market. This would result in decreasing competition and enabling room for irresponsible economic operators.

63 Chartered Institute of Procurement & Supply: <https://www.cips.org/en/knowledge/contract-management-cycle/>

64 Chartered Institute of Procurement & Supply: Monitoring the Performance of Suppliers, p. 1, CIPS 2013



CONCLUSIONS

Public procurement refers to the process by which public authorities, such as government departments or local authorities, purchase goods or services from companies.⁶⁵ Transparency, integrity, economy, openness, fairness, competition and accountability are some of the fundamental principles of public procurement.⁶⁶ We can conclude from this research that in general, based on the cases addressed above, the basic principles of public procurement are not observed by Contracting Authorities or Economic Operators. Even though during this research, most of institutions were ready for cooperation, Ministry of Education, Science and Technology provided no access to public documents required in compliance with the Law on Access to Public Documents. In general, from this research we can conclude that we face two different issues.

Issue 1:

Deficiencies in law for genuine contract management, allowed a poor work performance and increase of investments to “patch” previously performed works. In the case of school “Tefik Çanga”, the taxpayers, through the Education Department in Ferizaj, paid an extra 55,220.00 € to repair the works, paid once by the Ministry of Education, Science and Technology. In the case of Business Park in Drenas, poor contract planning and management resulted in a cost to the taxpayer/Kosovo budget in the amount of 66,485.17€. In the case of Sport Hall in Shtime, as a result of poor management of public contract, Kosovo citizens will pay extra €400,000 to repair damages caused due to the lack carelessness, and for completing and making this facility operational. While in the case of Business Park, the

Contracting Authority took several measures for accountability by terminating the contract with one of irresponsible operators, there were no penalizations in the cases addressed.

To increase the integrity and performance of institutions, and the awareness of Economic Operators about their responsibilities, it is necessary to amend the current legislation in order to adapt successful models for constant monitoring and assessment of contract performance. Such a policy would result in the establishment of an assessment system for Economic Operators, where responsible ones would be rewarded for their dedication, whereas irresponsible ones would be punished, thus resulting in the nurturing of economic operators for business sincerity, and would have an impact on reducing opportunities for benefit form contract quality neglecting.

Issue 2:

Based on the review of concerned cases, KDI finds that citizens are not familiarised with their entitlement to exercise the right for requesting compensation of personal and family damages caused by the results of public services or investments. In the case of Business Park in Drenas, for families of the village of Koreticë e Epërme, poor contract management and consequences from wastewaters management, resulted in extra costs for families, thus making their living conditions difficult. These residents were not informed, and there was a lack of institutional will to compensate their damages or to find a method for facilitating their livelihood.

⁶⁵ European Commission: Public Procurement: https://ec.europa.eu/growth/single-market/public-procurement_en

⁶⁶ Jorge Lynch, Public Procurement: Principles, categories and methods, Chapter 2: Basic Principles of Public Procurement, 2013



Katalogimi në botim – **(CIP)**
Biblioteka Kombëtare e Kosovës “Pjetër Bogdani”

351.712.2.028(047)

Patched investments / Instituti Demokratik i
Kosovës. - Prishtinë : Instituti Demokratik i
Kosovës. – 27 f. ; 22 cm.

ISBN 978-9951-745-05-5



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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

Financially supported by:



KFOS

Fondacioni i Kosovës për Shoqëri të Hapur
Kosovo Foundation for Open Society
Kosovska Fondacija za Otvoreno Društvo

ISBN 978-9951-745-05-5



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