

WHO GUARDS THE GUARDS? DECISION MAKING IN THE PUBLIC PROCUREMENT REVIEW SYSTEM IN ALBANIA

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DECLARATION OF AUTHORSHIP

I hereby certify that the thesis I am submitting is entirely my own original work except otherwise indicated

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ABSTRACT

The plethora of decision-making in public administration is a composition of roles and responsibilities exchanged between politicians as policy-makers and bureaucrats as policy-implementers. Their intra-institutional relations are not developed in vacuum, as they are influenced by intermediaries with whom state actors have selectively engaged interests. One area where this relationship is complex, understudied and pertinent to good governance is the Public Procurement System (PPS). For emerging democracies beset by weak institutions like Albania, this relationship is even more entangled and important for its development.

Although the Public Procurement System (PPS) in Albania is based on EU standards, its implementation is problematic, prone to corruption, and under-institutionalised representing the least likely case to be explained by Principal Agency theory since it was developed for consolidated democracies not emerging ones like Albania. In emerging democracies interests and elite roles (principals) are changeable and many times unpredictable, thus their institutional capacity does not necessarily comply with their 'real' (in)actions. In this vein, a direct application of the principal agent theory in an unsettled institutional context would produce incomplete findings. This thesis addresses this limitation by using a preceding theory, developed to explain the role of actors in unstructured

settings: the capture of state theory used to understand the ‘real’ role of institutional actors involved in the PPS. Following this, the principal agent theory can be used to explore issues of monitoring mechanisms and decision-making to elucidate the Agency problem in PPRS in Albania.

Overall then, this study establishes a connection between principal agent theory and emerging democracies by expanding its scope and enabling it to account for the behaviour of actors in the unstructured institutional settings of emerging democracies like Albania.

Punës së vështirë dhe rrugës vetmohuese që çel ky punim...

INTERNATIONAL SCIENTIFIC SUPERVISION

An important part of this research thesis was conducted during my academic visits to Salzburg University, Austria during October 2015-February 2016 and University of Essex, Institute for Social and Economic Research, United Kingdom during April 2016-July 2016.

The initial part of conceptualizing the research strategy was conducted at the Department of Political Sciences, University of Salzburg. My academic supervisor was University Professor, Doctor Reinhard Heinisch, Head of Department. Under his supervision, I laid the theoretical groundwork for the thesis. Other professors in the Political Science Department, including Professor Andrea Dur, provided valuable advice and became an inspiration for this work. This fellowship was awarded by the SIGMA Agile Project, Erasmus Programme and was funded by the European Commission.

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LIST OF ABBREVIATIONS

CA – Contracting Authority

JV – Joint Venture

SSA - Supreme State Audit

SSA - Stabilization and Association Agreement

PPS – Public Procurement System

PPRS – Public Procurement Review System

PPL – Public Procurement Law

PA – Principal Agent Theory

PM – Prime Minister

PPA- Public Procurement Agency

PPP - Public-Private Partnership

Chapter 1. Introduction

Unlike many other countries in Eastern Europe, Albania started its democratization process from scratch. Considering the rigidity of the communist system, Albanian institutions were highly underdeveloped in terms of democratization and many times the institutional structure did not even exist. Although successive waves of reforms have been undertaken since the fall of communist system in early '90, Albania still lags behind other countries in Eastern Europe, being still underdeveloped with an emerging democracy.

The international scholarship explains the difficult trajectory to democracy as a result of a set of factors such as: communist legacy, economy and social structures. However, scholars all agree that corruption is one of the most influential factors which impedes the democratization of the country. Albania is the most corrupted country in Europe and in the Balkan region. Many international reports position the country close to a semi-consolidated authoritarian regime, as far as corruption is concerned. Empirical data demonstrates that Albania is the country where the highest percentage of companies are expected to give gifts in order to get a government contract (World Bank & IFC, 2007). Although the management of public finances is one of the most vital instruments for a government to successfully fulfil objectives set in favour of public

interest, widespread corruption undermines the public procurement system.

One of the most important anti-corruption and compliance mechanisms in the public procurement field is the Public Procurement Review System (PPRS), whose role is to enable economic operators to challenge public procurement decisions made by Contracting Authorities (CA). According to the law, the PPRS promotes competition and non-discriminatory treatment of economic operators, upholding the rule of law within the Public Procurement System, and protecting actors from unfair and corrupt practices.

Although many efforts are made at national and international level to protect the integrity of the PPS, the system is prone to an environment of corruption where major contracts generate high returns in bribes and complex administrative procedures offer many gateways and a low risk of detection. Thus, for many countries, and particularly emerging democracies like Albania, public procurement systems fall short in terms of effectiveness, transparency, and accountability. This thesis aims to explore why successful practices of good governance in the Public Procurement Review System (PPRS) have failed in Albania.

1.1 Problem statement

A general principal in Political Science states that ‘power corrupts, absolute power corrupts absolutely’. As argued above, the Public Procurement Commission, as the main institution of the PPRS is purposefully built to be insulated from the rest of the administration to safeguard it from undue interferences. Hence, one important question is raised: Who guards the guards? (*Quis custodiet ipsos custodes*).

As identified by international reports such as Sigma, USAID, and the Progress Report of the EU Commission for Albania, the PPRS is one of the most problematic fields of public policy in Albania. The EU Commission Reports identify the lack of monitoring and control mechanisms, overlapping of tasks (EU Report, 2011), the lack of independence of the PPC (EU Report, 2012) and a lack of clarity in its institutional responsibilities and professional independence (EU Report, 2013) as major problems. EU Reports in 2014 and 2015 became even more critical in highlighting limitations regarding transparency, the quality of review decisions, inconsistencies, the length of procedures (2015 Progress Report), the PPC’s lack of independence from the government and impartiality from Prime Minister’s Office, the weak capacity of PPC and administrative court, and the continuous staff turnover in the PPC (2015-2016 Progress Report).

Furthermore, political independence is paramount for the effective functioning of PPC and PPRS in general. From its establishment, the PPC was established under the full competences of the Prime Minister's office (PM). Its members are elected directly by the Prime Minister (Law no.9643, dated 20.11.2006), who acts as sole principal. Although its independence is protected by law, the interference from the government and political pressure are favoured *prima facie* by the institutional setting of the PPRS. On the other hand, the work of any public institution should be subject to accountability as a check and a balance system. Thus, in the case of the PPC, neither the principal nor any other body is responsible for monitoring compliance and inconsistency of its decisions. The monitoring strategy is designed by the principal to control the agent, and in cases where it is missing, the principal willingly avoids the monitoring of the agent while the agent is under its full political dominance. Since the PPC is established as a quasi-juridical body, it should be granted independence from the executive (PM) but the latter, in the capacity of the principal, should monitor and control its activity and outcome. Failing to do these, the situation calls for a principal shifting to the role of the agent. Furthermore, despite problems derived from the institutional setting and the influence from outside, a persistent problem lays within the PPC itself. The quality of PPC work is poor, and many decisions are biased. The

presence of systematic cases of decisions that breach principles of public procurement, lack of compliance and inconsistency indicate that the agency problem dominates the PPRS.

Considering this situation and the continued unsuccessful attempts to consolidate the PPRS in Albania, this study explores the misuse of public power for private gain in the PPRS, focusing particularly on the PPC.

1.2 Main working concepts and definitions

The theoretical point of view of the study is concerned with the agency relationship that arises between the sub-ordinate (Public Procurement Commission) and its elected official (Prime Minister Office).

A chain of *Principal Agent relations* and responsibilities are established within the public procurement review system in Albania, involving actors inside and outside of the institutional settings. The governments and the tax payers (electorate) establish a principal agent relationship since the tax payer supplies the government with public money translated in procurement procedures and published in calls for bids. Although many scholars argue that the electorate is not the typical principal, as described by the PA theory, the delegation of power from the tax payer (electorate) to the government is an ideal-typical form of delegation in parliamentary democracy. On the other hand, the Government is the principal of firms, supplying them with financial resources in exchange for public goods,

services or works. Within this relation, the electorate is entitled to monitor the activity of the government on public fund distribution, while the latter controls the progress of firms in managing public funds. As the government is responsible for the efficient management of public money, it delegates its power to the Public Procurement Commission to review complaints of aggrieved vendors. This intra-institutional principal agent relationship established between the government (Prime Minister Office) and the sub-ordinate (PPC) is a crucial aspect to be studied as it constitutes the fundamentals of all other intra and interrelations among actors in the PPRS.

In general terms, *delegation* is a conceptual part of the policy at large and the baseline for PA relations. Agency discretion depends on the extent of delegation. There is, however, a last step of delegation of authority, which makes the institutions become independent. The most crucial factor that justifies the creation of independent agencies is the purpose of being free from political influence, or as stated in the literature be situated "at arm's length" from elected politicians. From the perspective of parliamentary democracy, delegation is a familiar phenomenon, but it should be mixed with accountability so as to sustain democratic institutions. While, 'from a principal-agent perspective, giving independence equals to suicide' (Gilardi, 2001:10). The thesis lays the ground for debate on issues related

to direct control from the government, transparency and accountability in decision making, political interference in selection/dismissal of staff and institutional setting in the PPRS which are the basics for an independent agency. This thesis does not only provide arguments on the current situation of the PPC in terms of its dependency, but it opens the debate for further and deeper research and policy recommendation in the field.

In unstructured settings, *interest orient actions and inaction of actors and their role* within the Principal Agent domain. Thus, it is very important to comprehend interests throughout. From all the principal agent relations mentioned above, the interest and role of the electorate is more controversial. Firstly, in terms of delegation, the electorate delegates all its competences to its agent, the Government. Thus, in the PA context, full independence is scarcely studied as an agency relationship. In terms of interests, the electorate has a two-folded approach: (i) diffused, considering the electorate as a group of individuals that acts rationally according to economic self-interest, and (ii) a single unit which in the capacity of voters is concerned with public interest. For the purposes of this thesis, the second role prevails in the analysis. Given the complexity and interest of other intra-institutional actors such as the PPC and the PM, the literature of agency suggests a more predictable and clear role. PA theory expects a Prime Minister in a governing position to pursue the

public interest and the most efficient use of public resources, while the agent (PPC) acts as a stakeholder that manipulates the principal due to the information advantage it possesses. Keeping this in mind, the study will pay special attention to the binomial relation: ‘interest orientation – role of actors within institutions’. For the purposes of this thesis, decision making as a working concept, is considered a process made by institutional actors with clear oriented interests.

1.3 Argument of the Thesis

Since theories cannot provide a ‘one size fits it all’ approach, researchers should be careful to use each theory within the settings it is able to explain. When the explanatory power of one theory faces troubles in delineating phenomena and processes, other theories can provide their mechanisms to explain the research problem. By doing so, theories can explain context for which they are developed, while the scope of each theory is widened to explain a variety of settings. This thesis acknowledges limitations of each theory in terms of explaining different contexts of modern and emerging democracies. Considering as baseline (i) the fact that the principal agent theory is developed to explain decision making in institutionalized contexts, and (ii) the interests and role of actors in unstructured settings are unclear; the theses use the explanatory power of the capture of state theory to identify roles of institutional actors in

unconsolidated contexts first, and then continue to explain the agency problem by the PA theory. For purposes of this research, terms like unstructured, unsettled, unconsolidated are used interchangeably to describe a state of emerging democracy.

1.4 Public Procurement System in Albania

Although not in the modern form we know it today, the application of procurement legislation in Albania dates back to 1930s. 50 years later, during the communist regime, public procurement was no longer a policy field. In terms of starting the democratization process, Albania, as many other eastern European countries, had been drawing up the legislation on public procurement, and the Public Procurement Law (PPL) was presented in 1995 following the UNCITRAL Model Law. However, Law No. 9643 of 20th November 2006 was a new addition to the Public Procurement System (PPS) complying relatively to the EU Directives. During a 10-year period, Law No. 9643 was amended several times; considering also the country's potential future entry to the European Union. The most important issues addressed by its amendments were the abolition of the Public Procurement Advocate (PPAd), the establishment of Public Procurement Agency (PPA) and Public Procurement Review System (PPRS). Obligations that derive from Stabilization and Association Agreement (SSA) aim to improve the Public Procurement

System which is prone to corruption. Albania has become part of several international agreements on fighting corruption, such as: United Nations Convention against Corruption, Council of Europe Criminal Law Convention on Corruption, Civil Law Convention on Corruption, etc. Moreover, the country has undertaken several initiatives, including the establishments of institutional units to fight corruption (e.g. National Coordinator for Anti-corruption established to coordinate the anti-corruption activities of the Governmentt, Anti-Corruption Task Force, the High Inspectorate of Declaration and Audit of Assets and Conflict of Interests and the network of focal points established in ministries to monitor the Anti-Corruption Strategy, etc.) and has implemented documents and strategies (e.g. Anti-corruption cross-sectorial Strategy 2015-2020). In 2014, the Section on Corruption and Assets Investigation was established at the Serious Crime Prosecution Office to investigate the cases of corruption of judges, prosecutors, etc.

Anti-corruption measures and EU oriented legal changes of PPS go hand in hand. The European Union (EU) candidate status granted in 2012 was followed by a series of measures which were reflected in the PPS as well. In terms of approximation to the EU directive 2014/24/EU, PPL in Albania is partly approximated, considering that this is not simply a process of transposition of the relevant directive to the national law, but

also an adaption of this directive to the national context. According to EU directives, in order to ensure an effective review system on public procurement, Member States can choose one of the review models (i) regular courts; (ii) specialized administrative bodies; (iii) a combination of both. The majority of EU member states (Austria, Bulgaria, Cyprus, Czech Republic, Denmark, Estonia, Germany, Hungary, Romania, Slovakia, Slovenia, Poland, etc.), have established specialised public procurement review bodies to manage the review practices. The Albanian PPRS is established according to the third model presented in the EU directives.

In Albania, the Public Procurement Review System is a chain of accountability which begins with the Office of Prime Minister that delegates the authority to public managers, the Public Procurement Commission. The PPRS is composed of three instances whereby the first instance is the contracting authority. The complaint has to be addressed to the contracting authority to review the claim of disqualified bidders. The second instance: Public Procurement Commission. After having exhausted the first instance, aggrieved vendors should appeal the decision to the PPC. The third instance: Administrative Court. An appeal against a decision of the contracting authority automatically suspends the procedure of awarding the contract until the decision of PPC is issued. However,

complaints before the court do not have a suspensive effect for decisions of the PPC.

In general terms, the reason why a revision procedure is available, besides enabling an aggrieved tenderer to obtain redress, is to create a foundation for a uniform application of the law and thereby serve as guidance for tenderers, increase predictability and thus uphold the rule of law (Carlsson, & Åström, 2008). It is important to mention from the outset that within the Public Procurement Review System, the Public Procurement Commission (PPC) is the highest decision-making body in the procurement field whose decisions are administratively final, and a legal status of a quasi-judicial appeal body.

1.5 Research Thesis Structure

The structure of the thesis is as follows:

Chapter II presents the main theoretical approaches and available conceptual prisms. It argues that the principal agent theory is the most appropriate theoretical approach to explain issues of power separation and vertical superior-subordinate relationships. Moreover, this chapter explains the main concepts such as: separation of power, delegation, asymmetry of information, control strategy, and their interrelation in decision making process.

Chapter III lays the methodological groundwork for the thesis. Reasons for choosing the Public Procurement Review System as a field of research are elaborated upon. Moreover, the selection of Albania as a case study is argued and justified. In terms of my methodological choices, arguments that justify the usage of principal agent theory and capture of state theory are put forward. Lastly, methods chosen for this research are presented by justifying this decision and arguing triangulation methods to achieve a better result and to cross-test the validity of findings produced by each method. Mechanisms of data collection are described in detail for both primary and secondary data. It is argued that there is necessary and sufficient secondary and primary data in place to proceed with the empirical analysis.

Chapter V starts by explaining why we cannot start from the principal agent theory in cases when unstructured settings are to be analysed. The chapter argues that identifying the real agent is a necessary pre-condition for PA theory to explain the PPRS decision making. Thus, capture of state theory is considered as a preceding theory to analyse and identify the real role of institutional actors. In order to do this, the study analyses the environment outside the agent-principal diad in terms of compliance with public procurement principles, such as: competitiveness, transparency, cost-efficiency, impartiality, etc. for a period of five years (2011-2015).

Deviances from public procurement principles, variances in balance of power when the government elite changes, red flags and a tendency towards corruption in the procurement system are indicators that are measured and explain the variable Capture of state. The analysis tries to identify the real role of institutional actors, by analysing the role of their contra-parts, groups of interests. The chapter concludes by revealing who is the real agent. By doing this the chapter opens the floor for the principal agent theory to deliberate the Agency problem.

Chapter V explores the intra-institutional relations of PM-PPC in the light of PA theory. The chapter conducts a review of Albania's PPRS institutional setting to examine its control and auditing mechanisms for the deterrence of inappropriate behaviour. As a second indicator, the compliance and consistency of PPC decisions are measured to identify manipulative decision making of the PPC. This is done by reviewing cases of stable patterns of inconsistent decisions of PPC. Monitoring and control mechanisms and consistency in PPC Decisions are two indicators of the explanatory variable Agency problem.

Chapter VI concludes with some theoretical and empirical considerations. *Appendix 1.1* analyses 12 cases of inconsistency, composed of 24 Decisions issued by the PPC during the period 2015-2017. These two parallel and controversial cases show that decisions of the PPC are

inconsistent and do not comply with the principles under which the PPC works.

Chapter II. Theoretical Approach

2.1 Bureaucracy in Public Policy

Politics consists of the shifting interplay of actors with different objectives and the primacy of one or another may depend on the particular situation and shifting constraints (Katzmann, 1986, 1988). In this vein, we could all agree that under circumstances of different objectives and motivations, the policy process becomes more complex with issues of public interest and capture of actors in the public sphere. As Levine and Forrence suggest, trying to analyse why we have some outcomes and not others, we need to explain when decision makers are captured or act in the public interest, using concepts such as slack, control, political dominance, etc. (Levine and Forrence, 1990)

This research focuses on the study of bureaucracy and decision making in the public sector. According to Meier and Krause, ‘the study of bureaucracy is the analysis of how administrative agencies function as organizations within a governmental system’ (Meier and Krause, 2003:1). In their research, they analyse inter and intra relations of bureaucracies, shedding light on the role of state actors, as well as the organizational structure and behaviour of administrative agencies themselves. In this context, as Simon would explain, while public administration is the art of

getting things done (Simon, 1997), decision making explains how things are done in public administration and by whom and for what reason.

The plethora of decision making in public administration is a composition of roles and responsibilities exchanged between politicians as policy makers and bureaucrats as performers of such policies. Looking for a theoretical approach to explain issues of power separation and vertical superior-subordinate relationships, many authors have developed their work in normative and empirical terms. Almost all theoretical models which explain decision making in public administration analyse the role of these two actors as interrelated. However, one of the main disagreements is the dependency or discretion that administrative agencies should have in terms of the issue of power separation in vertical superior-subordinate relationships. Theoretical views on this debate are controversial. A theoretical stream explains that there should be a clear separation of power between elected politicians and bureaucrats (see Wilson, 1887; Goodnow, 1900; White, 1926) while other authors advocate that roles and tasks of both actors should be interrelated and mixed (see Hecl, 1978; Hansen and Ejersbo, 2002). However, as a general approach, agency relationships have arisen between two (or more) parties when one party – the agent - acts for the other, - the principal,- in a particular domain of decision problems (Ross, 1973).

In fact, ‘the relationship of agency is one of the oldest and commonest codified codes of social interaction’ (Ross, 1973). A modern form of bureaucracy was developed during 18th century, while authors started to theorize about the role of the modern bureaucracy in 19th century. Publishing ‘The Study of Administration’ in 1887, Willson draws upon the fundamentals of public administration, followed by Weber and Taylor. Another influential theoretical work on the role of bureaucracy has been written in 1843 by Karl Marx in the ‘*Critique of Hegel’s Philosophy of Right*’. Almost 20 years later, the work of John Stuart Mill, written on the development of monarchies and bureaucracies as a distinctive form of government, was successful among political science thought. A more comprehensive work in terms of effectivity and rationalization of bureaucracy was conducted by the German sociologist Max Weber’s in 1947. Weber analyses design and organizational structures of bureaucratic institutions as well as rules and procedures to ensure inter and intra accountability. Weber’s contribution was famous for setting preconditions for bureaucracy to emerge as well as work competences in public administration. Weber saw bureaucratic thought as the notion of “rational-legal authority” and believed it a necessity for Western society. In contrast, authors like Ludwig von Mises (1944) produced strong critiques on bureaucratic systems and they claimed that the bureaucratic system

should be universally opposed. However, Weber's theory on bureaucracy was used and developed by the sociologist Robert K. Merton. In his famous book '*Social Theory and Social Structure*' (1957), Merton built upon Weber's theory to explain the attitude of bureaucrats in terms of interests and formality in establishing interpersonal relationships. Other scholars with a distinguished contribution relevant to this field are Barnard (1938), Simon (1947), March and Simon (1958), Cyert and March (1963), Crozier (1964), Tullock (1965), Downs (1967), Miller (1992), Brehm and Gates (1997), to mention a few. The entire plethora of this theoretical and empirical work has had, as Meier and Krause put it: 'a profound impact on our theoretical understanding of how superior-subordinate relationships within such organizations actually play out' (Meier and Krause, 2003:1).

2.2 Rational Choice and decision making

A major part of the theoretical work on bureaucracy links individual actions with social and policy outcomes. It focuses on individual actions and motives, as well as their behaviour in the superior-subordinate relationship. This therefore provides a path to analyse the performance of organizations at all levels of policy making. It is important to note that 'the work of Progressive Era scholars arguing for a scientific approach to administration gave way to the behavioural revolution in the study of

organizations’ (Meier and Krause, 2003:3). Works written by Barnard’s (1938) ‘*The Functions of the Executive*’ and Simon (1947) ‘*Administrative Behaviour*’ were classic analyses which considered the individual as the unit of analyses. As Jones, Boushey and Samuel have argued ‘policy is made by organizations, but organizations are made up of interacting human decision-makers. Consequently, ‘any theory of organizations harbours a theory of individual choice’ (Jones, Boushey, Samuel, 2006:39)

The intellectual roots theorizing individual choice can be found in models of rationality. Theories of *rational choice* and *bounded rationality* try to explain how individuals behave to produce social impact and policy outcome. ‘Although both begin with a common goal of connecting individual choice to macro political outcomes, they disagree fundamentally over how individual behaviour should be understood’ (Jones, Boushey, Samuel, 2006:39).

Considering individuals within the organization as rational actors, interested in individual utility maximization, public choice theory borrows concepts from the economic literature to explain individual behaviour in politics and policy. As Mueller puts it, ‘public choice theory represents an attempt at explaining government behaviour by extending the

methodology of *homo economicus* to the formulation and application of public policy' (Mueller, 1990).

Trying to atomize the complex process of decision making and predict future outcomes by explaining human behaviour and preferences, rational choice stress problems of constraints and utility, scholars like Friedman (1953) described individuals as pure utility maximizers who interact with social systems. More recent scholars like Levi (1997) and Ostrom (1999) have furthered analytical concepts of human behaviour and preferences to respond to the complexity of social outcomes.

In recent years, public administration and issues of control and delegation have been largely scrutinized using the explanatory power of rational choice modelling of decision making. This line of research considers decision makers in public policy as rational individuals who make strategic choice, using comprehensive information and ranked preferences. 'Rational choice decision making as applied to the implementation stage of the policy process generally takes the form of principal-agent models of the bureaucracy's interactions with the legislative, executive, and judicial branches of government' (Jones, Boushey, Samuel, 2006:50). In this context, the valuable analytical perspective offered by the principal-agent model 'is interesting and useful

only because the agent is strategic about his/her behaviour' (Meier, O'Toole, Bohte, 2006:2).

From this perspective, Jones, Boushey and Samuel would go on to argue that 'while principal agent dilemmas illuminate some important aspects of bureaucratic behaviour, its prominence in studies of public policy is partially an artefact of the rational choice model of behaviour'(Jones, Boushey, Samuel, 2006:50).

Focusing on the principal agent theory, this research will demonstrate how issues which interfere with decision making in public administration like information asymmetries and moral hazards, 'are those that map neatly onto the most basic assumptions of individual utility maximization' (Jones, Boushey, Samuel, 2006:50).

As Meier and Krause point out, Niskanen (1971) being the first public choice theorist to study the behaviour of bureaucracies claiming that while bureaucracy is preoccupied with *resource maximization*, its *monopoly power* over the distribution of public goods and services made it inefficient and unresponsive to both citizen and politician preferences (Meier and Krause, 2003). Despite its importance on pioneering the theory of bureaucracy behaviour, Niskanen's modelling on complex mathematics, perfect information and supremacy of agent over principal

was criticized by the work of later scholars who themselves provided a theoretical tool box to explain behaviour of bureaucracy and their decision making. Bendor and Moe argued that complex mathematical calculations would be beyond the capacity of most persons to use. The only important thing is *information asymmetry* between the bureau and the politicians, where bureau holds all the cards (Bendor and Moe, 1985).

2.3 Principal Agent Theory

In a teleological approach, the scrutiny of policy agenda, policy processes execution, etc. are conducted with the purpose of having a clear understanding of policy outcome or decision making. However, the literature is concerned with the policy process as well as the policy outcome. Policy execution is seen as ‘a game among legislators, the chief executive, and bureaucratic agents, which includes the initial delegation of authority, the choice of policy alternatives, and opportunities for oversight and control’ (Calvert, McCubbins, Weingast, 1989: 589). Meanwhile, the *policy outcomes* are described as joint actions of public officials throughout this process.

Linking the subordinate and hierarchical superiors, principal agency theory (PA) has been an increasingly dominant paradigm used in economics, law and public policy. Nowadays, principal agency theory helps the research agenda to explain relations in politics and public

administration. In other words, it is the study of asymmetric and hierarchical relationships between constituents and legislators (Moe, 1984, Kalt and Zuppan 1990); legislators and party leaders (Cox and McCubbins 1993) ; the legislature and its committees (Krehbiel 1991; Kiewiet and McCubbins 1991); the legislature and bureaucracies (Weingast and Moran 1983); regulatory agencies and firms (Baron and Besanko 1984) ; the Supreme Court and its relationship to lower courts (Songer, Segal, and Cameron 1994) and to presidents' decisions to use force (Downs and Rocke 1994).

The explanatory power of the agency theory is not only used to bring to light the relation between the subordinate and its hierarchical superior, but it also stands as the dominant theory to explain the regulatory processes in public policy, as found in the analyses of Majone 1994, Thatcher and Stone Sweet 2002, Levi-Faur 2005, Christensen and Lægreid 2006; etc.

As Mitnick has noticed, the agency literature is now big enough to display distinctive 'schools' (Mitnick, 1984). There are three distinguished schools of thought and the main scholars whose work has been developed into these approaches. An early contribution has been provided by scholars such as Zimmerman 1977, Jensen and Meckling 1976 to develop the *so-called 'Rochester school'*, using elements of transaction costs approach and the modern theory of the firm as an analytical device. Earlier

attempts to apply theories of the firm to political relationships were dangerous (Moe, 1987). Another approach is developed by the work of Bainman (1982), combining variables of system rewards and actors' information to develop a *formal mathematical modelling* to analyse the relation between principal and agent. The *sociological/organizational or behaviour* approach developed by Mitnick, 1974; Eisenhardt, 1983; White 1983, is concerned with sociological elements of organizational behaviour and concepts such as control and authority (Mitnick, 1984). For the purposes of this study, the relation between elected officials and the bureaucracy will be placed at the centre of principal-agency argument, following the sociological/organizational approach.

Rooted in the economic behaviour of organizations, the agency theory is largely used to explain decision making in principal-agent relations, political organizations, as well as relations with interest groups. That is to say, 'studies of public officials have already found agency concepts useful in analysing and prescribing their behaviour [...] while agency has found a natural resting place in some studies of interest groups and lobbying' (Mitnick, 1984). Mitnik has put forward this argument by claiming that many of the problems, which take part in the public institutions, are in fact agent-principal problems (Mitnick, 1984). Principal agency situations are commonly found in political analyses of public bureaucracy 'whenever

one individual's actions have an effect on another individual' (Stiglitz, 1987: 967), or 'whenever one individual depends on the action of another' (Pratt and Zeckhauser, 1985: 2). The agency theory is about dependency and effects of behaviour and outcome, as well as transaction of responsibilities from one party to the other, or the so-called delegation of power. In this context, Coleman explains:

'the origin of the transaction is usually the fact that one actor, the principal, say Paul, wants to accomplish a certain goal but, lacking some of the skills, capacities, or resources necessary to do so, finds another actor with those features, say Anna, and obtains her services in return for remuneration. Through this *transaction*, whose terms are stated in a *contract*, Anna becomes Paul's agent. (Coleman 1990: 146)

In its simple context 'the agency theory looks at how to ensure that agents (executives, managers) act in the best interests of the principals (owners, shareholders) of an organization' (Alchian, 2013:1). Out of these situations, the theoretical model is developed to analytically evaluate the agency relationship based on an *ex ante contractual agreement*. As Terry M. Moe puts it, 'the principal-agent model is an analytic expression of the agency relationship, in which one party, the principal, considers entering into a contractual agreement with another, the agent, in the expectations that the agent will subsequently choose actions that produce outcomes desired by the principal' (Terry M. Moe, 1984: 756). From a more general perspective, agency includes concepts of information provided, control

exercises, incentives given, risk aversion and behaviour outcome. In the principal-agent relation, the *tendency of failure or malfunction* of any of these systems is preeminent, so that it is quite impossible in practice but also in theoretical terms to talk about a perfect agency. Thus, as noticed by Mitnick (1975; 1980) and Perrow (1972), the goal conflict and information asymmetry of the agency are recognized as the spark plugs that power the theory.

Agency is an analytical approach concerned with information and control issues. Agents, as individuals motivated by public or private interests, and bureaucracy as a composition of structures and processes, are responsible for the wide information they possess and the accountability toward the principal. From the principal or politicians' perspective, 'the question of political control of agencies is a straight forward principal-agent problem: elected officials who create administrative agencies must worry about future shirking by the bureaucrats within the agency' (Marcey, 2015:3)¹. Being a complex relation, the attitude of agents toward the agreed contract and the outputs (decisions) of the agency, need to be supervised by the principal. Neglecting the contract, agents might use the information advantage in a way that shapes the output in line with their private

¹ for more see McNollgast, 1987; Mitnick;

interests. The role and importance of information symmetry, as described by Meier and Krause (2003), have divided scholars into two groups; one more optimistic and one more sceptical on the solution. There is a stream which argues that agency' information asymmetries are sufficiently large to make it difficult for principals to monitor the behaviour of administrative agencies². Conversely, many scholars view incentive structures and monitoring activity as effective in guiding the behaviour of administrative agencies³. To date, there is still a need to empirically test the role that monitoring, control and incentive system bring to weaken the agency conflict and increase its performance toward the obligations of the contract.

A crucial element of the principal-agent theory is *public accountability*, and the extent to which the agent is accountable to the principal. However, there is always the risk when accountability can be used to satisfy political interests. 'Specifically, these works are termed principal-agent models of *political control* over bureaucracy since political institutions have various policy and administrative tools at their disposal to ensure bureaucratic compliance with their policy wishes' (Meier and Krause, 2003:9).

² e.g., Banks and Weingast 1992; Bendor, Taylor, and Van Gaalen 1985, 1987; Niskanen 1971; Woolley 1993; Cook 1989; Worsham, Eisner and Ringquist 1997

³ e.g Breton and Wintrobe 1975; McCubbins and Schwartz 1984; McCubbins 1985; McCubbins, Noll, and Weingast 1989; Miller and Moe 1983;

Analysing issues such as information asymmetry, contracting and accountability, 'the principal-agent model has generated a wealth of research on political control over the bureaucracy'⁴

Both the principal and the agent act as decision makers. The agent's decisions are the output of his behaviour taken within the structures and processes of the bureau. Decisions of the principal are two-fold; *ex ante decisions* are responsible for constituting the optimal contract, respond to the agent's opportunity to shift and ensure bureaucratic compliance. *Ex post decisions* derive from observing the outcomes (decisions) of the agent and judging his measured shirking behaviour. Pre-agreed decisions that structure the agent's incentives to take various actions constitute, in the language of principal-agent theory, a contract. Principal agent theory is often considered as a specific part of the contract theory (Bolton and Dewatripont, 2004).

The principal is the actor or coalition of actors that enacts the policy and the agent is the actor that implements his/her decisions. In other words, the principal is the first mover who chooses an incentive scheme to reward the agent. Otherwise, the principal may punish the agent if, from the

⁴ See Calvert et. al 1989; Carpenter 1996; McCubbins and Schwartz 1984; McCubbins, Noll and Weingast 1989; Mitnick 1980; Moe 1982; 1985; Niskanen 1971; Potosky 1999; Weingast and Moran 1983; Weingast 1984; Wood 1988, 1990; Wood and Waterman 1991, 1993, 1994

observation (monitoring) results, the latter has not satisfied the principal's preferences.

Scholars have identified several *reasons such as costs, capacities, motivation and political will*, which make the principal chose to *tolerate* agents' behaviour to a certain extent, allowing as such what scholars refer to as the '*agency loss*'. 'Agency loss is what occurs when the agent gets a bit of extra slack from the principal to pursue its own interests rather than the principal's' (Gailmard, 2012:6). Concepts of agency loss and political control will be developed in the following chapters.

Despite the power to explain critical phenomena in public policy areas, 'principal-agent theory has both strengths and weaknesses as an analytic device for understanding public bureaucracies in a democratic system' (Meier and Krause, 2003:15). Some weaknesses of the theory are related to its limitations to goal conflict, hierarchy and equality, flexibility (Krause 1996a, 1999) and the fact that it hinders the negotiation process.

Meier and Krause, drawing upon the work of other scholars, have put forward few of the *limitations of the agency theory*. As other scholars⁵ have previously stated, 'in numerous instances, agency-political relationships may typically *reveal goal congruence*' (Meier and Krause,

⁵ see Meier, Wrinkle, and Polinard 1995; Waterman and Meier 1998

2003:10). Assumption of goal incongruences and shirking agents are the bottom line of the principal agent theory, and a pre-requisite for the theory to be developed. Moreover, considering that the relation is based on a contract which includes both parties - the agent and the principal - we should not talk about *hierarchy* which sees 'administrative agencies as being subservient agents of the principal(s) [while] this alternative view is problematic since a contract is an agreement between equals' (Meier and Krause, 2003:10). Moreover, the modelling choice of agency theory, which grants the right for principals to 'unilaterally impose a contract [...] over-emphasizes the possibilities of control through incentive manipulation and under-emphasizes the role of the *negotiation* process itself' (Whitford, Miller, Bottom, 2009:32).

In the last decades, the principal agent theory has been an excellent conceptual prism considering the inherent complexity of relations established within bureaucracy agencies as well as among them and their principals. In this way, principal agent theory diminishes the approach that bureaucracy is generally a black box whereby outputs (decisions) are highly important, leaving aside the internal processes (Meier, Bohte, 2006:3). As a theory, it provides elements to 'make relationships between superordinate and subordinates *tractable*, which in turn can cull

generalizable theoretical and empirical insights about how public bureaucracies function in a democracy' (Meier and Krause, 2003:9).

2.4 Principal Agent Problem

The Principal Agent theory assumes that there exists a problem in the relationship established between an elected official and the bureau. In Waterman and Meier words 'the principal – agent relationship is governed by a contract specifying what the agent should do and what principal must do in return' (Waterman and Meier, 1998:174), even if this implies a costly action for the principal. This is where the problem of this relationship arises, 'under circumstances when the principal cannot perfectly and costlessly enforce an ex ante promise by the agent to act in the best interests of the principal' (McCubbins, Noll, Weingast, 1989:434).

The agent is making decisions in a particular policy field on behalf of the principal who has delegated the power. As Mitnick stipulates, 'in identifying agency problems we seek to characterize the various ways in which *failure can occur*' (Mitnick, 1984). After the possible ways of agency failure are identified, one is able to explain the decision making of agents through mechanisms of principal-agency theory. In other words, as Ross would argue, 'the basic problems of the agency are the failure of perfect agency to occur' (Ross, 1973). Theoretically, in general terms, the

perfect agency would be possible in situations where there is *obedience* to authority, such as:

- The agent is faithfully following principal's preferences, meaning that the *agent is loyal* to the principal and do not deviate from what is agreed and what the principal wants;
- Despite how the agent behaves, the principal has *access to a good monitoring* or supervision technology, then he or she can 'either directly observe the agent's action or can infer it from the outcome by filtering out the effect of exogenous risk' (Besley, Ghatak, 2005:5);
- When the *organization has a good reputation* and it presents high credibility for the principal to extend the agency discretion;
- The dominance of *Fiduciary norm*, as identified by Mitnick (1974, 1975a) and Stinchcombe (1975) 'public officials are often said to operate under a special 'trust' or with a special responsibility' (Mitnick, 1984). Authors like Young and Moore (1969) and other later authors, have used 'the occurrence of fiduciary prescription to explain excesses in agent behavior and lamented the deviant behaviours that have been said to occur in its absence' (Mitnick, 1984).

However, in real situations, examples of perfect agency are very difficult, if not impossible to find, as the agency problem is almost always persistent as long as there is delegated power and alternative options for decision

makers to follow. The underlying rationale with this idea is that ‘even if no policy disagreement exists, principal-agent theory suggests that bureaucrats are likely to shirk, to produce outputs at a higher than needed cost, or to produce a level of outputs that is lower than desired’ (Waterman, Meier, 2015:176).

Following this argument, Mitnick remarks that ‘as agents rarely behave exactly as their principal prefers, these deviations give rise to characteristics of ‘agency problems’ (Mitnick, 1984). Considering this, he lays down the question of how is the principal controlling his/her bureaucratic agents? Firstly, the principal has a valuable tool to address agency problem, considering that he/she designs the agency structures, part of which are incentive structures or control mechanisms. Moreover, by placing a monitoring strategy, the principal has the right to sanction the agent whose activities stray from the principal’s references (Mitnick 1980). Despite the strategy used, in all cases, the principal assumes that the agent would shift. Analysing particular areas of public policy, Milgram (1974) put forward the phenomenon of ‘*agentic shift*’ vis-a vis the concept of ‘*agentic state*’ in terms of bureaucratic compliance to authority’s preferences.

Agent shift

‘Agentic shift’ or the opportunity of agents to behave differently or rarely from what principals would prefer, happens when the following criteria are met:

the principal and the agent have objectives that are not fully aligned and that actions undertaken by the agent cannot be perfectly monitored by the principal (Besley, Ghatak, 2005:3) or in other words the principal and the agent have conflicting goals in preferences and interests;

there are potential alternative sources of reward for the agent for pursuing goals that are to some extent inconsistent with the principal’s (Mitnick, 1984). (e.g influence of groups of interest to the agent);

In general terms, when making decisions, the agent can choose either to obey and work or shift the obligations set by the principal. ‘The common original dichotomy of responses, working versus shirking, has been replaced by a more varied set of options’ (Meier, O’Toole, Bohte, 2006:3). The decision of agents to shirk depends on the existence of the monitoring and incentive measures, the performance of the monitoring strategy used by the principal (mechanisms can be in place, but monitoring does not take place), the approach of the principal toward the effectiveness of the

policy, the monitoring of third parties and their credibility, as well as the utility the agent receives by shirking compared to working.

From a principal agent perspective, 'if the choice is to manipulate the output measure strategically, the organization has three options: lying, cutting corners, and generating biased samples' (Meier, O'Toole, Bohte, 2006:7). As Downs (see 'Inside the Bureaucracy') explains, lying happens when numbers are reported not in a correct way, but with the purpose to make a good impression. Lying is a simple method to be used by agents when shirking, however it is not convenient in cases when the monitoring system of third actors is active and intense. Cutting corners is another way of presenting positive results by manoeuvring with inputs measured to generate the result. The third way, sampling bias, means that the agent would present a pool of positive examples to the principal, so that the latter would positively evaluate his/her performance (Downs, 1967).

Principal Strategy

In spite of a shirking agent, the principal faces contemporaneous issues of uncertainty and information asymmetry which limit his/her ability to reduce the principal-agent problem. As Perrow observed, 'the principal-agent model is fraught with problems of cheating, limited information, and bounded rationality in general.' (Perrow 1986:224). Although it comes with a cost, the principal has to overcome issues of information

asymmetry and bureaucracy's uncertainty (see Bendor, Taylor, and Van Gaalen 1985 and 1987) as they grow when the probability of an agent to shift increases.

In order to avoid the agentic shift as much as possible, the principal should construct the mechanisms to continuously observe the agent's behaviour and judge the outcome (decision making). What would be the mechanisms that the principal can construct to rein in the behaviour of agents whose preference profiles are not in sync with their own? There is a two-folded answer. The principal can:

- (a) construct the necessary incentives so that the agent will comply with his preferences;
 - (b) monitor the behaviour of the agent and supervise its outcome;
- (a) Incentive scheme

One day Deng Xiaoping decided to take his grandson to visit Mao.
‘Call me granduncle’. Mao offered warmly.
‘Oh, I certainly couldn't do that, Chairman Mao’, the awe-struck child replied.
‘Why don't you give him an apple?’ suggested Deng.
No sooner had Mao done so and the boy happily chirped, ‘Oh thank you, Granduncle’.
‘You see’, said Deng, ‘what incentives can achieve.’
(Capitalism, 1984, p.62).

In order to minimize agency failure, ‘the agent provides the service and the principal compensates the agent. The principal's task is to develop an

optimal compensation package that will attract the most capable agent, and then motivate that agent to perform services for the principal in the most efficient and productive manner' (Dees, 1992: 27⁶). One of the ways to do this is thought incentive schemes, which include (a) rewards and (b) punishments (Besley, Ghatak, 2005:6). On the other hand, we have admitted that agents are self-interested actors. When choosing between reward scheme or incentive contracts and coercive control, many theorists believe that motivation of subordinates is particularly important. This pool of scholars believes that although the subordinate might be qualified enough to do the job right, the performance varies also by his willingness to pursue the principal's best interest or to maximize his interest instead. According to Moe, 'the agent has his own interests at heart, and is induced to pursue the principal's objective only to the extent that the incentive structure imposed in the contract renders such behaviour advantageous' (Moe, 1984, 756). In such a way, 'even in hierarchical institutions, much of the work of controlling subordinate behaviour can be left to the subordinate's self-interest' (Miller, Whitford, 2007:214), if it is guided by the correct incentives. By doing this 'the expense and moral ambiguity of

monitoring, rulemaking, and coercion can be largely avoided' (Miller, Whitford, 2007:214).

Although 'over the past three decades, the theory has de-emphasized the power of monitoring and increased its emphasis on monetary incentives'(Miller, Whitford, 2007:214), 'yet most organizations, and in particular public agencies, rely very little on pure incentive contracts and instead use coercive mechanisms of monitoring and sanctioning that many theorists find objectionable'(Miller, Whitford, 2007:213).

A theoretical debate on monitoring and motivating is raised between Alchian and Demsetz (1972) and Holmstrom (1982). The former argue that the principal's role is to monitor and chastise subordinates, while Holmstrom took a radically opposed position, claiming that the principal should not necessarily be focused on monitoring, but rather on prioritizing incentive schemes for police agents in a credible way. Holmstrom (1982, 325).

If we agree that asymmetric information can be overcome by the right incentives (Harris and Raviv 1979; Holmstrom 1979), why not to use incentives more frequently in real case examples? The theory explains that 'if the principal gets the incentives right, the organization will become a machine that runs by itself, fuelled by an adequate supply of self-interested behaviour' (Miller, Whitford, 2007). However, the fact is that

‘a number of recent studies document the puzzling lack of incentives even in corporate hierarchies (e.g., Baker, Jensen, and Murphy 1988). They find that even in those cases where the agent’s performance can be directly linked to compensation, corporations often still choose to use contingency-free compensation schemes’ (Miller, Whitford, 2007:214).

As explained by Miller and Whitford (2007), there are two reasons which make incentive schemes not a solution to the PA problem, and call instead for the application of systemic monitoring and control mechanism:

- One reason is risk aversion. Due to risk aversion and information asymmetry, the efficiency of monitoring cannot be replaced by incentive schemes which are based on the observed outcome. (Harris and Raviv 1979; Holmstrom 1979). The incentive scheme relies on outcome-based incentives, which on their side undermine the efficiency of risk sharing by shifting risk to the agent.
- An agent may interact with a random variable to produce an outcome of value to the principal⁷ (Miller, Whitford, 2007:2016) which creates risk and variability.

⁷ For example, a tenant farmer’s crop is determined jointly by his own effort and the weather. In general, we assume the probability of a good crop increases with the farmer’s efforts. However, this fact does not allow the farm owner to deduce anything about the farmer’s efforts from the final outcome. If there is a bad crop one year, the farmer may blame the weather, even though he himself shirked. In a good year, he may take the credit, although the weather played a large part. This is the problem of information asymmetry that is basic to principal-agency theory. The farm owner could make an investment in monitoring, so that he can pay the tenant farmer only if he works hard. However, this is usually a costly process. The problem, conceived of as the principal’s

(b) Monitoring and Information advantage

Good monitoring of the agent is an important and inevitable mechanism in the principal-agent relation, despite the costs it bears.

Knowing that the agent might get engaged in non-sanctioned actions due to information advantage and specialized knowledge, the principal establishes monitoring strategies. Theoretically, if politicians would possess the full information on the behaviour of the agent, or if the agent would not have the expertise advantage, then information asymmetries would not exist. As Sharon Hannes (2007) stipulates, whenever one person, the agent, is required to fulfil a task for another person, the principal, the latter draws supervision strategies, which are known in the literature as monitoring and bonding. 'Monitoring is the principal's efforts to monitor what the agent is doing, to ensure that the agent pursues the principal's ends. Bonding in contrast, was classically understood in agency theory to refer to voluntary, largely contractual self-constraints on the agent's discretion' (Yuking, 2010:66).

When debating the best strategy to be used by the principal, scholars agree on the importance of monitoring mechanisms, however they point out a

problem, is to design a contract that will induce the tenant farmer to work even without monitoring and sanctions. For example, sharecropping is a form of contract in which the tenant farmer comes to share, with the owner, a strong self-interest in a successful crop. The owner can then presume a high effort on the part of the farmer without ever having to verify it.

few limitations, especially when compared to the incentive strategy.

Limitations can be summarized as follows:

- Noll and Weingast (1987) consider that monitoring is a highly imperfect strategy of control, because it is costly (see also Meier and Krause) and it cannot directly detect issues of asymmetric information;
- Monitoring incurs transaction costs as well as opportunity costs;
- ‘The use of active monitoring, contains the stigma of punishment and generates displeasure among agents’ (Brehm and Gates 1997: 43);

In this way, Meier and Krause⁸ argue that ‘monitoring of agent behaviour is a more intricate task than creating incentive structures’ (Meier and Krause, 2003)

The opportunity for the agent to shirk exists due to the incomplete information that the principal has. ‘Incomplete information means that principals, who wish to delegate authority to perform tasks on their behalf, have neither full nor accurate information regarding agents’ actions.’ (Meier and Krause, 2003:8). Being aware of this, the principal draws up an incentive scheme and monitoring instruments which try to mitigate two main problems cited in the formal literature: hidden action and hidden

⁸ McCubbins and Schwartz 1984; Ogul 1976; Scher 1963; but see Aberbach 1990

information. Hidden information and actions are significant part of principal-agent relations (Arrow 1985; Moe 1987, 480–82).

Hidden Action

In the literature, hidden information is also referred to as a situation in which the principal finds it difficult to observe and control the behaviour of the agent, but can judge the optimality of that behaviour. This is called Moral hazard (Moe 1983). In other words, moral hazard refers to situations where the agent does not put in effort to perform as agreed. As discussed above, a way for the agent to perform is to have incentives generated from the principal. Examples of such incentive schemes are: the piece rates and fixed-price contracts or profit share and bonuses. However, while the former comes with a risk for the agent, the latter comes with a cost for the principal. Having the risk that ‘the agent will get ‘punished’ even though the fault is not his or hers, the solution lies in offering an incentive scheme that lies somewhere between a completely flat salary and a sharp incentive scheme where the agent bears all risk’ (Besley and Ghatak, 2005)

Directly observing the agent behaviour and detecting cases of moral hazard is sometimes not convenient and many other times, it faces the lack of the principal’s will. In this case, the principal can use proxies or

surrogates for the unobservable agent behaviour, even though these might be subject to imperfection (Mitnick, 1984).

Hidden Information

Adverse selection refers to the misinterpretation of an agent's ability due to incorrect information provided to the principal. In contrary to the moral hazard situation, in adverse selection problems, the principal is able to observe the agent, but he faces difficulties in judging the optimality of the agent's behaviour. In this informational asymmetry, the agent is privy to some information⁹ so that the principal needs to make a decision in his or her own interest, but the agent prefers that the information be used differently.

Agency costs and Agency loss to avoid moral hazard and adverse selection

While the principal draws mechanisms to supervise the agent, he is aware of the information advantage that the latter has over the principal. Monitoring strategy and incentive mechanisms constructed to avoid moral hazard and adverse selection give rise to the so-called 'agency costs'. Trying to encompass the possible ways of agency failure, Jensen and Meckling (1976) divide agency costs into, (a) the monitoring (including policing) costs of the principal, (b) the bonding costs of the agent taking

⁹ Accountability and Principal-Agent Models_Sean Gailmardy . e.g: informational advantage lies in the selection process

steps to act as the principal desires and (c) some residual loss from the less-than-perfect agency.

Further on, a detailed explanation on monitoring, bonding and residual costs is provided by Sharon Hannes (2007). When the agent does not follow the principal's ends, the principal must scrutinize his/her behaviour and employ expensive means to verify what the agent is doing. In doing this, the principal should bear monitoring costs. Another form of supervising is bonding measures, which are used to ensure objectivity in the agent's work and intend to ensure that the agent sticks to the objectives of her employment. Hence, 'a public servant is often required to cut any ties he/she may have with the business community [...] or is required to refrain from personal investments to prevent skewed recommendations' (Sharon Hannes, 2007). Such actions bear the bonding costs. Hannes also explains the residual loss¹⁰, which is in place due to the existing conflict of interest between the principal and the agent. However, 'as long as the residual losses are lower than the cost of additional bonding or monitoring costs required to overcome them, it is efficient to incur these losses' (Yuking, 2010:65).

¹⁰ For example, a certain amount of theft by workers always occurs; some confidential information will always leak; and employee effort levels rarely meet those of owners.

The principal agent model provides necessary measures to be taken in order to reduce the agency's loss. In their famous paper, Jensen and Meckling (1976) propose three measures which would reduce the principal agent problem. These measures are as follows:

- The principal and the agent develop and design together the contract, which establishes all leverage necessary (incentive schemes, monitoring systems) for the agent not to shirk;
- The principal monitors the agent's activity;
- The agent undertakes activities demonstrating that their actions are not harmful to the principals;

Several years later, Kiewiet and McCubbins (1991) built upon their predecessor's work to identify four classes of measures which would limit problems that derive from moral hazard and adverse selection. The first measure is similar to the one identified by Jensen and Meckling. Similarly, Kiewiet and McCubbins (1991) think that the joint design of the contract is a very important measure which would allow a number of sanctions to be added in case of non-obedience. In response to the adverse selection problem, Jensen and Meckling propose screening and selection mechanisms that will avoid the hidden information. In line with Jensen and Meckling, they propose monitoring and reporting measures which would control the activity of the agent. Institutional checks are the fourth

measure proposed by Kiewiet and McCubbins, which hinder the agent's ability to conduct damaging actions.

Principal Agent Contract

From a wider perspective, 'organizations can be seen in part as systems of contract in which agents occupy employment relations with organizational principals' (Mitnick, 1984). The contract is a crucial part of the principal-agent model, and in Eisenhard's (1989) words, it is the 'unit of analyses for agency theory'. Thus, the way contracts are designed poses a challenge for both the principal and the agent. As an outcome of delegation, the contract raises the question of how to write contracts which transfer the authority to agents whose performance can be measured and incentivized (Alchian, 2012) and which reduces agency loss?

As discussed, the joint design of the contract is an important measure to reduce agency loss. Despite the fact the principal and the agent can design the contract together, as a measure, this does not guarantee for the perfect agency to occur, neither can a contract be fixed as a perfect and completed document. As Milgrom and Roberts put it: 'contingencies inevitably arise [...] and when they do parties must find ways to adapt' (Milgrom and Roberts, 1992:128). Trying to establish the most efficient contract, Eisenhardt focuses on types of contracts. He distinguishes between 'a behaviour-oriented contract' and 'an outcome-oriented contract'. This

remains an important challenge which we will address again in the latter sections.

Behaviour vs. outcome control strategy

Although the principal grants the right to intervene everywhere in the system, this does not enable him to regulate all agency failures. Agency failures may be found in all operating systems of the agency (information, communication, etc.) or in the principal's ability to process and evaluate the information received. Considering this, the principal has to choose from among these strategies. He can invest in information systems, which, in other words, means to observe the agent's behaviours. 'This requires the purchase of surveillance mechanisms such as cost accounting measures, budgeting systems, or additional layers of management' (Eisenhardt, 2013:136). The principal can also control the outcome of the agent's behaviour. 'Such outcomes are surrogate measures for behaviour' (Eisenhardt, 2013:136).

Both ways pose a considerable risk. The information systems require time and it is costly, while the outcome-based contracts face the risk of uncertainty. This is because the outcome may vary only partially on the behaviour and most of the time on extraneous factors (Eisenhardt, 2013). Moreover, the outcome-based contract transfers the risk to the agent. Under such circumstances, when he or she chooses the control strategy,

the principal has to trade-off between these two types of costs. The risk is either efficiently borne by the principal (which leaves the agent with an incentive to shirk) or is inefficiently shifted to agents in order to create incentives that overcome moral hazard' (Harris and Raviv, 1979). In this view, 'control system measures and rewards, not only motivate behaviour, but also alter risk sharing patterns' (Eisenhardt, 2013:137). Ouchi has furthered his study to suggest control strategies. Based on such work, 'recent organizational approaches of control suggest two strategies: control through performance evaluation, cybernetic process of monitoring and rewarding performance and control can be achieved by minimizing the divergence of preferences among organizational members' (Eisenhardt, 2013).

2.5 Control of the agency

Although there is a risk of uncertainty and the information asymmetry, the principal agent model still tries to give an answer to issues of control over bureaucracy which, according to the model is a shirking bureaucracy. As Mitnick claims, 'agency theory has begun to explore some of the ways in which principals can police agents in such institutional settings' (Mitnick, 1984).

In this vein, David Epstein states that what control tries to address is the problem of bureaucratic drift. In other words, the deviation from what was

agreed and expected; the change of course in delivered outcomes. Epstein goes on to analyse two general categories of control used toward the recipient of delegated authority. The first category, ex ante controls, is concerning issues of agency design while the second category is ongoing controls which concerns issues of oversight. Ex ante control targets, issues of procedures of reporting, the agency's key constituents, standards or criteria the agency considers when promulgating regulations, the executive department where the agency be located, etc. Ongoing control is focused on instruments of congressional oversight, such as direct and indirect monitoring; juridical oversight implemented through existing administrative law (Arshaw, 1990) and presidential appointment power (Calvert, McCubbins, Weingast 1989, Spulber and Besanko 1992) (Epstein, 1999).

Many other authors have classified control mechanisms as ex ante and ex post (see Hammond and Knott (1996). Others show that the political control of the bureaucracy is better achieved either through ex ante or ex post control mechanisms. McCubbins 1985; McCubbins, Noll, and Weingast 1989 believe that control is achieved through ex ante mechanisms. They explain that mechanism such as legislation, administrative procedures, organizational structures and personnel are used by political actors to control their subordinates. Those who favour ex

post control of the bureaucracy believe more in mechanisms such as political appointments, ongoing interactions with the bureau, and congressional oversight hearings' (Bendor and Moe 1985; Bendor, Taylor, and Van Gaalen 1987a; Miller and Moe 1983b).

In McCubbins and Schwartz (1984), word mechanisms can be categorized as *direct* and *indirect* forms of control.

- '*Police-patrol oversight* is the classic form and involves the direct examination by the principal of a sample of his agent's activities in order to detect and sanction drift' (Fabrizio Gilardi, 2013:5). According to Spence, police patrols represent the oversight committees whose purpose consists in supervising the agencies' activities (Spence, 1997).
- '*Fire-alarm oversight*, on the other hand, is a less intrusive and less costly form of control that relies on third party signals over the agent's actions. The principal establishes a structure that enables affected third parties such as interest groups and media to report bureaucratic misbehavior' (Gilardi, 2013:5). After forms of noncompliance are detected by third parties, the principal may initiate an investigation, in a formal or non-formal way.

The direct oversight or 'police patrols' bears a considerable cost for the principal as it is 'time-consuming and, because of informational

asymmetries, not very effective' (Gilardi, 2013:10). On the other hand, with the indirect oversight, the principal gets the information using other sources and responds to a system built and run by someone else (interest parties, media, actors outside of the principal-agent diad, etc.). By doing this 'the politician is converted from active monitor to reactive servant, more an ombudsman than a policymaker' (McCubbins, Noll, Weingast, 1989). However, the indirect form of fire alarm monitoring might sometimes bear the risk of being a non-credible source of information. However, the theoretical framework shows that often 'politicians tend to rely more on "fire alarm" oversight, where affected third parties such as interest groups and the media monitor agency behavior and push for political action when needed' (Gilardi,2013:5).

Ogul (1976) divides measures of control into formal and informal measures. For example, he categorizes committee hearings as formal measures while the private meetings and telephone contacts as informal methods.

Addressing the PA problem, the principal has to find efficient and less costly mechanisms of control. Ex ante and ex post control mechanism display strengths and weaknesses. However, if the principal makes a good combination of these mechanisms, the most effective and less costly way of supervising the agent can be revealed. To the question on what would

be the most efficient mean of control to achieve policy stability, arguments favouring *constraints on the flexibility of agencies* (ex-ante) and *oversight, rewards and debate punishment* (ex post) are provided by different scholars. Many authors think that ‘the most effective means for achieving policy stability are constraints on the flexibility of agencies, rather than reliance on rewards, punishments, and oversight’ (McCubbins, Noll, Weingast, 1989:440). Others believe that since ‘all individuals seek to maximize their positions with the least-possible effort, it is necessary to establish efficient punishment and reward mechanisms, so a person placed at the service of another does not deviate from the latter’s objectives and interests’ (Pires and Guimaraes, 2015:880).

Referring to the literature, main ex ante and ex post mechanisms are described in this study. However, one should note that these mechanisms are not exhaustive.

Ex ante control mechanism

Design the agency. ‘Mechanisms of ex-ante control enable the politicians to design the agency in order to predetermine and achieve some policy preferences’ (Haruta, Radu. B, Radu.L, 2009:83). Designing the agency structure and granting the opportunity of redesigning it, also leaves space for political control of the agency from the principal.

Administrative procedures¹¹ are an ex ante and indirect control mechanism. The principal 'see the choice of administrative structures and processes as important in assuring that agencies produce policy outcomes that [the principal] deem satisfactory' (McCubbins, Noll, Weingast, 1989:432).

The principal agent literature poses two assumptions on administrative procedures. One is the 'stack the deck' policy, which aligns agencies' decisions with political interests of their principals, including the influence of interest groups over the policy (McCubbins, Noll and Weingast 1987 and 1989; Bawn 1995). The second assumption is that an administrative procedure reduces politicians' uncertainty on bureaucratic agents (Bawn 1995, Moe 1989).

Being used as a control mechanism, administrative structures have three main positive effects in the principal agency problem:

Firstly, 'administrative procedures counterbalance informational asymmetries in that they force the bureaucracy to disclose relevant information, about both planned and implemented actions' (Gilardi, 2001:6) by limiting moral hazard and adverse selection problems.

¹¹ See the work of McCubbins, Noll and Weingast 1987, 1989; Epstein and O'Halloran 1994; Bawn 1995, 1997; Balla 1998; Huber 2000

Secondly, administrative procedures address the problem of "legislative drift" as discussed by Horn and Shepsle (1989) and "the problem of political uncertainty" as discussed by Moe (1990, 1995).

Thirdly, administrative structures 'encourage compliance is by preventing the agency from presenting political principals with a fait accompli and instead forcing it to warn them well in advance of any potentially noncomplying decision' (McCubbins, Noll, Weingast, 1989:441).

Hardwiring constrains agency decision making so that the agency's decisions reflect the intent of the politicians enacting the procedure legislation and not the preferences of future political coalitions that may have hostile policy references (Potoski, 2015:626)¹². This type of problem identified as political uncertainty refers to the fear that subsequent political coalitions, who will act as future principals, will abandon the up to date policy and enact new rules. In order for this not to happen, the coalition in power has to build "an institutional structure to create pressures on agencies that replicate the political pressures applied when the relevant legislation was enacted" (McCubbins, Noll and Weingast 1987: 255).

¹² Moe 1989; McCubbins, Noll, and Weingast 1987 and 1989

The limitation of administrative procedures is that they cause delay in decision making. However, this limitation can be a burden only for some types of administrative institution while it might not cause a problem for others. ‘The courts are undoubtedly a major source of these procedures, reflecting their attempts to protect individual rights of due processes’ (McCubbins, Noll, Weingast, 1989:441).

Appointments¹³ as a control mechanism take part when the principal appoints the head of the public institution or other members of the board/commission. As a mechanism, its challenge rests in the number of principals that appoint the head of the bureau. If there is an appointment made by multi-principals, the effect of this control mechanism is much lower compared to when the appointment is made by a single principal. Theoretically, ‘agency members usually cannot be dismissed for reasons other than incapacity or misbehaviour. This means that political principals cannot remove agency members if they disapprove of their policy choices’ (Gilardi, 2001:12). However, in practical terms cases of dismissal are commonly found to have been taken place in disrespect of the above-mentioned principals.

¹³ Weingast and Moran 1983; Weingast 1984; Calvert, McCubbins and Weingast 1989; Spulber and Besanko 1992; Huber 2000; Huber and Shipan 2001

Budget is an effective mechanism of control which is used to limit agencies' discretion (Moe 1987; Huber 2000; Huber and Shipan 2001). When allocated to subordinate bodies, budgeting can impose sanctions and rewards to agencies, depending on the outcome. As a mechanism of control, its application varies on the type of public institution to which it is applied. In the case of local governance bodies, this mechanism can be more efficient, while in several other public institutions the budget cannot be easily used as a control mechanism.

Ex ante and ex post mechanisms

Administrative control of public institutions is theoretically related to the role of courts. 'The rightness of the administrative decision-making process is often challenged and questioned in courts by the existing affected parties' (Haruta, Radu. B, Radu.L, 2009:84). Administrative control encompasses the problem of delays in legal procedures and court decisions, to the point that, sometimes the court decision comes into force late enough for it to bring the supposed effects. Procedural ruling, judgments of agents' decisions as well as statutory interpretations enable the court to impact and influence the agency. Administrative control, implemented through court system scrutiny functions both as an ex-post and ex-ante control mechanism.

Legislation can also be used both as an ex ante and ex post mechanism of control.

Legislation as an ex ante control mechanism: Legislative specificity as a control mechanism refers to ‘writing into the law precisely and in a detailed way what the agency is to achieve, and how to do so’ (McCubbins, Noll, Weingast, 1989:440). Huber and Shipan point out that ‘legislation is potentially the most definitive set of instructions that can be given to bureaucrats with respect to the actions they must take during policy implementation’ (Huber and Shipan, 2001: 35). They go on to offer an accurate way of distinguishing control over regulatory agencies by measuring statutory control with the length (number of words) of legislative statutes to see how superficial they looked. Moreover, they argued that ‘control over regulatory agencies is exercised when policies are specified in detail in legislation’ (Huber and Shipan, 2001)

Legislation as an ex post control mechanism: ‘Enacting new laws, or even simply threatening to do so, could be a mechanism to control the bureaucracy’ (Gilardi, 2001:13). However, Moe (1987) argues that, as a controlling tool, legislation is ineffective because by threatening, the principal might seriously risk the lack of credibility. Moreover, even if the new legislation emerges, there is still the risk that the agent would ignore it and as such would not implement it. Following Moe’s argument,

McCubbins, Noll and Weingast (1989) also argue that principals cannot count on new legislation to sanction the agency.

Ex post control mechanism

Prior to the work of Horn and Shepsle and McNollgast, studies of political control of administrative agencies were focused on efforts to control bureaucratic behaviour by ex post mechanisms. This monitoring took a variety of forms: direct oversight by congressional committees by specialized agencies such as the Congressional Budget Office and the General Accounting Office, and reliance on constituents 'fire alarm' notification (McCubbins, Noll and Weingast, 2015).

One of the most important approaches of ongoing or ex post control mechanism is the oversight. Despite many forms and venues of influence (actor who exercises the power), in the theoretical context, oversight is used as a political means over bureaucracy to underscore their decision. Oversight is not a linear process and it can be exercised by single or multi principals. When referring to the actor who exercises the power to oversee, there is, as actor David Epstein explains, congressional oversight, such as direct and indirect monitoring; and juridical oversight implemented through existing administrative law investigations into the performance of an agency (Epstein, 1999).

According to McCubbins, Noll and Weingast (1989) oversight can be applied in the following forms:

- in the context of the annual budgetary process, and occasionally as part of the reauthorization of an agency's programs;
- Congress and the President have "watchdog" agencies to monitor agency performance, such as the Office of Management and Budget and the General Accounting Office.

Re-Organization as a control mechanism happens when politicians try to control bureaucracy through threatened or actual reorganizations of departments (Huber and Shipan 2001). This includes reorganization of its department units, staff changes, etc. It distinguishes itself from the designing of the agency, which is an ex ante control mechanism.

Regulatory peer review is a mechanism of control used toward public institutions to detect shirking. 'In terms of its usefulness, the regulatory peer review represents an ideal instrument against the informational monopoly over analysis that one public agency could possess' (Haruta, Radu. B, Radu.L, 2009:83). Including mainly technical analyses, peer review aims to analyse and detect biased and selective decisions. It tries to uncover cases when a decision has shifted an outcome that benefits a favoured party, such as a client or an interest group (Shapiro and Guston, 2006).

Institutional check is a control mechanism which applies the cases when the principal delegates the same competence to more than one agent, so that they can compete to better achieve the principal's preferences (Ferejohn 1999: 132; Huber and Shipan 2000: 28)¹⁴.

The extent to which the principal monitors the agent's behaviour is a matter of the principal's decision. There is a variety of reasons and motives under which the principal decides how to monitor the agent. Dahl provides an in-depth analysis describing the motives of principal decisions, explaining the extent to which he/she gets involved in solving the principal agent problem. Dahl states that 'the depth and width of principal's involvement depends on the available resources at their disposal – financial, physical and informational resources, political will, and capacity to build support among other actors –, the type of intrinsic motivations, the personal or collective interests that are at stake, the ability to mobilize public opinion and the access to the agendas of the public institutions' (Dahl, 2008, see also Kingdon, 1994; Stone, 1997).

According to PA theory, the principal's decision to monitor the agent depends considerably on the *cost* required to monitor the agent's actions. Being a rational actor, the principal decides whether or not to monitor the

¹⁴ See Kiewiet and McCubbins 1991

agent and to what extent. One of the main issues discussed by the regulatory literature is that: ‘principals rationally *decide* not to monitor their agents' behaviour’. This explains why the public interest is so often made subservient to private interests in the regulatory arena’ (Waterman, Meier, 2015:175). As explained by Waterman and Meier (2015), principal rationality to *decide* not to monitor their agents' behaviour, also makes the distinction between the economical and the institutional or regulatory principal-agent models. In the first case, the economic principal (buyer) is attentive of his agent's actions because if the agent shifts, the principal will bear all the costs. In the political arena, such costs are shifted to the general public, and the principal does not bear any direct cost, despite the risk posed to the forthcoming elections, in case the public becomes aware of the situation.

2.6 Can we start from the Principal Agent theory?

Despite the strength of the principal agent theory to explain decision making and issues of information asymmetries in public administration, its explanatory power is limited to institutionalized contexts only. Scholars claim that the principal-agent theory has been increasingly used to elucidate the decision-making and implementation process of government policies in modern democracies (Pires and Guimaraes, 2015:880). In such environments, the principal and the agent can be easily

identified, as their actions comply with their institutional roles. If analysis is conducted for unstructured settings, premises of principal agent theory face difficulties in explaining actions and inactions of actors, by raising questions of identifying who the actor in the role of the agent and the principal is. In unconsolidated democracies, the principal agent theory can be applied only after there is a clear analysis which identifies the real principal and agent; in emerging democracies actions of actors and their decisions are difficult to predict by their institutional role. Thus, the PA analysis needs to be preceded by a theory which is developed to explain the role of actors in unstructured settings. Once this theory explains who the real agent is, the PA theory can continue to analyse the agency problem. This approach delineates the scope of each theory, by enabling them to explain the context for which they are developed. By doing so, two-step analyses are required, the first is related to the identification of the real principal and agent when they operate in unstructured settings, and the second is the explanation of the agency problem that arises between the principal and the agent.

In order to address this issue, the explanatory power of the capture of state theory is used to explain the influence of groups of interest in unconsolidated contexts. By analysing the rent-seeking behaviour of interest groups and different proxy measures of state capture, it is

identified how groups' interest uses government power for their narrow interest and how the latter responds to such demands. The identification of such clusters, composed of state and non-state actors who have selectively engaged their interest for private gain, sheds light on a new network structure that shifts the agency problem to a new agent and a new principal.

It is necessary to explain from the onset that state capture is not simply analysed as a form of widespread corruption where groups of interest fulfil their interest, but to show how the behaviour of actors outside institutions affect the role of actors within institutions. This leads to establishing institutions that favour favouritism and biased decision making. As regards this two-sided coin, the political principals distribute resources so as to extend their political control over the emerging private sector (Čučković 2002, Franičević 1999), while the latter is successful in securing assets, not because of their business competence or financial resources, but because they have fruitful connections to the political elite (Franičević 1999; Petričić). This bionomic relation is a crucial point to consider when analysing institutionalized grand corruption as part of the agency problem in unstructured settings. Many anti-corruption efforts fail because they misdiagnose corruption as a formal principal agent problem

and miss the elite-driven character of state capture (Persson, Rothstein, and Teorell 2013).

2.7 What is capture of state?

For many decades now, scholars have studied the public interest theory of regulation, which generates concepts of public good as a prerequisite of a good governance. Public interest theory is ‘both a positive theory about what motivates policy-makers and a normative theory about what should motivate them [...] which posits political actors who act, sometimes perhaps mistakenly, to further a vision of the public good’ (Levine and Forrence, 2015:168). Parallel to this, the capture of state theory is developed to shed light on the self-interest motivations of decision makers. Capture theory claims that ‘regulation is simply an arena in which special interests contend for the right to use government power for narrow advantage’ (Levine and Forrence, 2015:167).

Trying to emphasize the role of interest groups in decision making, theoretical assumptions can be tackled ‘back to Marx's view that big business controls institutions’ (Laffont and Tirole, 2015:1089). The modern capture theory, known also as the economic theory or government services theory of regulation, ‘was given foundation by Downs (1957) and Olson, and afterwards it was applied systematically to legislative behaviour by Mayhew, to regulatory behaviour by Stigler, Posner,

Peltzman, and Becker' (Levine and Forrence, 2015:169). The theory is still dominant in explaining how the relationship of politicians and their subordinates is influenced by the pressure of interest groups, and why governmental officials respond to demands of such groups.

Considering that 'agencies are captured by the interests they are supposed to regulate [...] the bureaucratic politics could be best described as an iron triangle relationship, in which not only bureaucrats and politicians, but also representatives of interest groups play a role in the decision-making process' (Haruta, Radu. B, Radu.L, 2009:78). Driven by the economic interest, the iron triangle model includes state and non-state actors to make decision and achieve pre-agreed outputs. Thus, this research work resonates with the idea that the relation of politicians and bureaucrats with groups of interest is interrelated to secure economic profit and political support. In other words, 'if politicians or bureaucrats can invent public policies that improve the utility positions of groups of individuals or firms, the advantaged interest groups will become their political sponsors and make resources available which will enhance the private utility of the policy-makers by reelecting them or otherwise rewarding them' (Levine and Forrence, 2015:170).

In fact, advocacy on private over public interest is contrary to the general rhetoric of public administration, since politicians and bureaucrats

describe themselves as *public or civil servants*. Thus, deviation from public interest comes with a cost, trade-off risks trust in the government and re-appointment in public duties. The trade-off between private and public interest has been explained by rationalists who explore reasons why bureaucrats interact with a given set of interest groups and exchange mechanism for each other's resourceful positions (See Aberbach, Putnam, and Rockman 1981; Carpenter and Ting 2007; Peters 2001). However, it can be seen from the literature that the direct interactions between interest groups and public agencies are poorly studied as independent research topics¹⁵. Tirole (1986) has elaborated on some of the reasons why groups of interest influence decision making and why public officials respond to their demands. Such reasons include the hope for future employment, personal connections, avoidance of public critics by the wealthy economic actor, etc. Moreover, reasons why public officials approach groups of interest to influence decision making are either because (i) they have served or might serve as sponsors who brought and will maintain public officials in the office or (ii) business will respond to their narrow economic interest by providing bribes to public officials. On the other hand, business interests include profit-like actions which satisfy industry

¹⁵ A good work has been conducted by Carpenter, Esterling, and Lazer 1998; Furlong and Kerwin 2005; Yackee 2005; Yackee and Yackee 2006

earnings, raise of their economic influence in the market, etc. (see Chubb 1983; Moe 1985; Posner 1974; Scholz and Wei 1986; for a discussion, see Carpenter 2010).

As rational actors, public officials ‘will consider the costs and benefits of forming and maintaining coalitions necessary to maintain them in office or enhance their wealth or power, while their sponsors will consider the costs and benefits of influencing government to act in their favor’ (Levine and Forrence, 2015:168). Thus, in these bilateral relations, rational actors make a cost benefit calculation which apparently produces positive results for both parties to interact. This explanation put forward the idea of *policy good* as the reason why interest groups gain direct access to public policymaking. The policy good offered by the interest groups is commonly referred to as “resources” and conceptualized as tradable but immaterial asset that interest groups possess, such as campaign contributions, technical expertise, or policy information, etc. (See Dur 2008; Hall and Deardorff 2006). On the other hand, the type of policy good offered, is related to the internal organizational logic such as financial resources, type of membership, or the type of interests they represent (See Beyers, Eising, and Maloney 2008; Dur 2008, Braun, 2012).

‘The captured economy is trapped in a vicious circle in which the policy and institutional reforms necessary to improve governance are undermined by collusion between powerful firms and state officials who reap substantial private gains from the continuation of weak governance’ (Cepiku, 2004:3). The political elite is both the actor for change and the factor of change. Thus, when private interests capture it, the system reflects poor governance and low control and monitoring strategies. In such conditions, as Hellman and Kaufmann claim, state capture has become not merely a symptom, but also a fundamental cause of poor governance (Hellman and Kaufmann, 2001). Despite the effects, capture of state leads to poor governance, as importantly, it shifts the role of actors within institutions by orienting their interests toward private gain. Normally, actions and inactions identify the role of actors, but actors’ behaviour, hidden by the scrutiny of institutions and their compliance to institutional norms, are difficult to be revealed. Thereof, not the theoretical literature, nor the empirical cases studies so far, are keen on analysing the role of actors directly. Having said this, the real role of institutional actors can be either identified by analysing their contra partners such as groups of interests with whom they collude, or by analysing the institutional system where actors operate, for the establishment of which they are responsible. Thus, the study suggests an

indicative and indirect way which can identify cases where actors have shifted from their role. This analysis overpasses relations of institutional actors among each other, as part to PA theory scrutiny. It uses elements of collusion and capture of state found in the environment outside the PA relation by analysing the pervasive behaviour of firms to reveal actions and inactions of institutional actors when they shift from their duty. The chapter argues that shifting institutional actors helps to identify the real agent, as a necessary and sufficient condition to fully explain the PPRS via the Principal Agent theory. This approach will follow the analysis of the thesis.

2.8 Concluding remarks

The rationale of the theoretical chapter includes three important issues. First, the researcher opts to find the most appropriate theoretical approach to explain issues of power separation and vertical superior-subordinate relationships. To do this, the researcher digs in the academic literature that has studied relationships that arise between the elected official and the sub-ordinate. In conclusion, the principal agent domain is an excellent conceptual prism with the most explanatory power in this regard.

Secondly, after having decided the theoretical groundwork to be used for the analysis, main concepts and their interrelation in decision making are identified and explained for adaptation in the empirical concept during the

analysis. In this vein, main concepts related to power separation such as: delegation of power, agent shift, asymmetry of information, control strategy, etc. are elaborated upon carefully and in detail.

Thirdly, it is argued that in emerging democracies interests and elite roles are changeable and many times unpredictable, thus their institutional capacity does not necessarily comply with their 'real' (in)actions. Although a relevant explanatory framework, a direct application of the principal agent theory in an unsettled institutional context would produce incomplete findings. This is why a capture of state theory, developed to explain the role of actors in unstructured settings, is used as a preceding theory to understand the 'real' role of institutional actors involved in the PPS, so that the principal agent theory can be used to explore issues of decision-making to elucidate the Agency problem in PPRS in Albania.

Chapter III. Methodology

3.1 The research question

The aim of this study is to understand decision making in the public procurement review system. To this end, the research question tries to explore why successful practices of good governance in the public procurement review system (PPRS) have failed in Albania. The study does not hypothesize about a proposed relationship between two variables, thus it does not include a hypothesis.

By establishing the Public Procurement Commission (PPC) in 2010, one can say that the PPRS in Albania was designed according to institutional EU models. However, six years after its establishment (2011-2016), the PPRS outputs are not satisfactory and PPC decision-making is questionable.

This study is important, not only because it sheds light on an underdeveloped country like Albania, but also on an understudied field like the Public Procurement Review System. It tries to make a tangible analysis of causes that affect PPRS performance and bring unsatisfactory outcomes of its decision making. This project brings together the capture of state and principal agent theories by satisfying their explanatory mechanism in contexts which they are able to delineate.

3.2 Research design

Management of public finances is one of the most vital instruments for a government to successfully fulfil objectives set for public interest. To achieve this, practices of good government should be in place to ensure the integrity of the Public Procurement System (PPS) and avoid the misuse of public funds for private gain. The literature on state capture usually uses corruption in public procurement process as a proxy to estimate the quality of governmental policies. Considering this, the study investigates the decision making in the Public Procurement Review System (PPRS) by assessing how variables of capture of state and the agency problem allow corruption to thrive within the PPS.

Most previous studies on corruption practices in Public Procurement rely on formal institutions to analyse constraints of corrupt behaviours. However, the study is based on the assumption that approaches to identify and measure corruption are less reliable when they are based solely on formal institutions and control mechanisms such institutions possess. This is so because corruption is a phenomenon that thrives where formal institutions fail to provide services. Therefore, focusing on formal institutions only, provides a shallow and technical account of corruptive practices without going into the underlying mechanisms and reasons that enable it to thrive. To address this issue, the study considers the influence

of groups of interest in unconsolidated contexts which influence the decision-making of state actors. Investigating the behaviour of non-state actors as a way to identify the real role of state actors to the detriment of public good is a new approach to study public procurement in a developing country. By tailoring actions and inactions of state and non-state actors in unsettled institutions, the study contributes towards the literature on corruption.

In a situation where the research question focuses on ‘why’ questions, the case study strategy where the researcher tries to investigate contemporary events, is the most appropriate research design. (Yin, R. K, 2013).

Considering Eckstein’s (1975) contribution to crucial case studies and the identification of the least/most likely case study, Albania presents the ‘least-likely case’ which is a ‘tough test’ that posits the theory where it is unlikely to provide good explanation’ (Bennett and Elman, 2010: 505), following as such the logic of Levy (2008) of the ‘Sinatra inference’ if a theory can make it here it can make it everywhere. Not only the PPRS is prone to a corrupt environment, but Albania is also a country with the highest level of corruption in Europe, where a high percentage of companies are expected to give gifts in order to get a government contract (World Bank & IFC, 2007; Transparency International Report 2013; Global Competitiveness Report, 2015 etc.). Theories like Principle Agent

(PA) that are used to elucidate policies of decision making in modern democracies face difficulties in explaining actions and inactions of actors in such underdeveloped contexts. Having said this, Albania, as a case study poses a challenge for the explanatory power of the PA theory. To address this, the study used capture of state; it was developed to explain the role of actors in unstructured settings, as a preceding theory to reveal the real role of actors which will be subsequently analysed by the explanatory mechanisms of PA theory.

The study employs a theory testing approach, which is best assured by intra-case variation that keeps constant the other variables that change due to the heterogeneity of cross-case research design. Moreover, it offers a controlled environment where the variables are tested. The application of PA theory in unstructured settings like the PPRS in Albania will provide groundwork for analysis and understanding of other case studies applied in similar contexts. The findings of this research improve not only the theoretical explanation of the principal-agent domain in unstructured settings, but they also help the understanding of empirical cases which allows for the usage of appropriate policy tools.

The unit of analyses

Since the project has two independent variables, it has two units of analysis. Firstly, I consider all contracts (sorted by their value) that have been awarded after a review by the PPC. Winning contracts are used to analyse the behaviour of firms in terms of respect of public procurement principles and variances of economic power due to government elite changes. For purposes of a more detailed analysis, the study considers the overall number of contracts for a sample of 20 top active firms in the PPRS, for the period 2011-2015. The data about contracts awarded are found in the public Bulletins of Public Procurement Agency (APP) published online.

The second unit of analysis is decisions of the PPC. Such documents are analysed to study the decision making of the PPC, by identifying consistency and compliance to rules and regulations. As available public documents, decisions of the PPC for the period 2011-2016, are retrieved from the official website of the PPC.

3.3 Why Albania and why the PPRS?

Unlike other countries in Eastern Europe, Albania started its democratization process from the scratch. Considering the rigidity of the communist system, Albanian institutions were highly underdeveloped in terms of democratization and many times the institutional structure was

not even present. After a few decades of undertaking reforms and democratizing its institutions, Albania still lays behind other countries in Eastern Europe, being still an underdeveloped country with an emerging democracy. Corruption in Albania is widespread compared to other countries in the region, and many international reports posit the country close to a semi-consolidated authoritarian regime, as far as corruption is concerned.

The role of the Public Procurement Review System is to enable economic operators to challenge decisions of public procurement Contracting Authorities. According to the law, the PPRS promotes competition and non-discriminatory treatment of economic operators. However, many international surveys on corruption in Albania identify public procurement as the area of government activities most prone to corruption. Major contracts generate high returns in bribes and complex administrative procedures offer many gateways and a low risk of detection of corrupt actions. Despite the numerous legislative initiatives and institutional restructurings, the PPS in Albania remains a highly problematic sector where both national and international actors have been unable to find long-term, sustainable mechanisms for increasing its effectiveness and accountability.

Both Albania as a country and the PPRS as a research field are understudied by the national and international scholarship. Much research on public procurement leaves out the review system from research consideration. International reports that publish annual reviews on the management of public finances (Sigma, USAID, Transparency International, etc.) underline the importance of good management of public procurement but pay little or no attention to the review (remedy) system. Publications of the European Commission focusing on PPRS provide some generalist descriptions of review systems operating in member states, missing comparative analysis or critical reviews for effectiveness of the PPRS in member states and/or non-member states. Considering this, the study scrutinizes the issue of managing of public contracts in the PPRS in Albania to help academia enrich the empirical consideration of research and add value to the policy making of the specific case study.

Albania is a complex and challenging choice. The country is the least developed country in Europe, and the most corrupted one. In unsettled contexts, the interests and roles of elites in power are changeable and often unpredictable, while their institutional capacity does not necessarily comply with their real actions and inactions. In this regard, Albania

presents a provocative case study for a theory developed for developed institutional settings as PA theory is.

On the other hand, the PPRS is a very problematic study area due to its direct influence on the management of public finances. Unlike other sectors in the public procurement system, in the review system, interest of technocrats and elected officials are met, reflecting many times in mutation of roles of actors within the system. Outside the institutional setting, the PPRS is prone to the influence and interest of firms. Non-state actors influence not only procurement officials, but also their elected ordinate. The direct and hidden role of non-state actors pose a challenge for the analysis of the RRPS.

To study decision-making, regarding the management of public funds in review system, the study draws a line between the capture of state and principal agent theory; the PPRS in emerging democracies and the relationship of non-state and state actors.

3.4 Dependant variable

The dependant variable is the decision making in the public procurement review system from 2011-2016. It is important that decision-making undergoes a systematic and deep analysis so as to understand its outputs and hence the performance of the system. Decisions are taken by actors

which operate in certain systems and contexts. Thus, the indicators of decision making as a variable are (i) actions and inactions of institutional actors within PPRS and (ii) the institutional settings where institutional actors operate.

Both indicators are significant and take their context from institutions because decision making is a process which is valid because of and within the institution and is made using institutional tools. The outcome of decision making has a general effect and targets institutional and non/institutional actors.

From a theoretical point of view, the study is concerned with the agency relationship that arises between the sub-ordinate and its elected official. In this study, this relationship is raised between the PPC and the PM Office. Despite the fact that this study is not centred around decision making in all three instances, it still considers their role and actions when analysing the decision making of the PPC and its ordinate.

3.5 Independent variable

The study includes two explanatory variables: the capture of state and the agency problem. In other words, by the capture of state, it is understood that the rent-seeking behaviour of firms as non-state actors and by agency problems, the monitoring and control of the performance of public sector

and hence avoidance of corruption, is compounded by informational constraints (Rose-Ackerman, 1978; Klitgaard, 1988). Both independent variables predict deviant and corruptive behaviour, thus corruption in the public procurement review system centres around the content of independent variables. Independent variables target actors inside and outside institutions.

3.5.1 Independent Variable [1]: Capture of state

Capture of state tries to identify how non-state uses government power for their narrow interest and how the latter responds to such demands. In undeveloped settings, the network cluster is composed of state and non-state actors who shifts and reposition their role in the principal-agent domain. Since state capture shifts the role of actors within institutions, theoretically and practically speaking, it is very difficult to identify pervasive clientelism. Having said this, indicative and indirect ways are used to analyse cases when actors have shifted from their institutional role. Thus, the behaviour of firms as non-state actors is analysed to reveal actions and inactions of institutional actors. Indicators that are used to measure the capture of state are as follows:

Indicator [1.1] Measuring compliance with principles in public procurement system

By analysing main principles in public procurement such as competition, transparency, cost-efficiency, impartiality and independence from political control, the study will reveal if groups of interests influence decision-making of state actors by collusion and corruption practices. The degree and strength of such a collusion indicates the extent of state capture from private interests (Wedel, 2003). Main principles of competition, transparency and cost-efficiency are measured and analysed by indicators such as one bidder, bid rigging, no calls for bids, impact of governmental change and elections in re-balancing wealthy firms in the PPS. Impartiality and independence from political control is analysed by variances of firms 'performance in public procurement when new government elite comes into power. Cases of wealthy firms appearing and/or disappearing from competition in PP when new government comes to power, enable us to identify their connection to governmental elites. Moreover, newly registered firms gaining overestimated public contracts, despite the lack of previous experience in public procurement, uncover collusion of such firms with state actors.

As explained in detail in Chapter 3.6.5 and analysed in Chapter 4.5, the researcher retrieves the data by official Bulletins in APP portal. Filtering firms that have been awarded a contract after a complaint to the PPC

because of the value of the contract, allows us to analyse all principles and identify those firms/contracts that have a higher risk of corruption.

Indicator [1.2] Red flags

In public procurement, it is hard to open the black box of corrupt transactions between state and non-state actors. However, red flags are a common way used to reveal practices of interest groups and capture of state by private interest. As analysed in Chapter 4.6, individual cases are identified from emerging firms in public procurement when the new governing elite changes, as well as awarding outstanding value contracts to unexperienced firms, aiming to prove that state capture exists.

Indicator [1.3] Institutional system of public procurement where state and non-state actors operate

The key question for investigation at this stage is the analysis of the PPRS, where state and non-state actors operate, to understand if the institutional setting is built in a way that facilitates networking and the interference from outsiders and groups of interest. In Chapter 4.7, deficiencies of the procurement system are tackled and explained to understand how they allow corruption and collusion to take place. Actors who design the system are held responsible for the deficiencies of the system, thus undue interferences of non-state actors in the system are addressed as challenges

to state actors that have established the grounds of the system. The study reasons that lack of measures for improvement are considered as intentional inactions of state actors and indicate state capture.

3.5.2 Independent variable [2]: The Agency Problem

From the outset, the focus of this study is the agency relationship which arises between the PPC in the capacity of an agent and the Prime Minister (PM) as the principal. The agency problem includes a shifting agent and a principal that designs a monitoring strategy to control the agent. This variable explains the misuse of public power for private gain within the PPRS from the side of both the principal (Prime Minister) who acts as an agent and the sub-agent (the PPC). In order to measure the agency problem, the study uses the following indicators:

Indicator [2.1] Monitoring and control mechanisms

The examination of monitoring and control mechanisms tests the validity of findings provided by the state of capture theory. If the monitoring strategy designed by the principle (PM) is absent or demonstrates deficiencies, then the principal has captured the agent thus there is no need to monitor the results. Thereof the principal is acting as an agent and is willingly avoiding monitoring. On the other hand, the agent (PPC) is either shifting in the absence of a monitoring strategy or is under the principal's full political dominance and control. If the analysis conducted

by the PA theory confirms the above-mentioned scenarios, the logic falls under the same arguments and findings discussed by the capture of state theory.

Theoretically speaking, the work of any public institution should be subject to accountability, proving a check and balance system. Thus, in the case of the PPC, the principal or another body should be responsible for monitoring compliance with legal provisions. This indicator applies tools borrowed by PA theory such as ex-ante and ex-post monitoring and control mechanisms. Legislative specificity, design/location of the Agency and appointments of staff are analysed as ex-ante monitoring and control mechanisms. Oversight (juridical and administrative) and regulatory peer review are analysed as ex post monitoring and control mechanisms.

Indicator [2.2] Compliance and consistency of Decisions of PPC

Typical distortions in the decision making of the PPC are difficult to uncover by simply assessing the conformity of procurement records towards legal provisions. As *prima facie*, they seem legally-sound and well-reasoned. Considering this, the study aims to find other ways which reveal problematic decisions made by the PPC. Thus, the study is concerned more with cases of variances and inconsistency in decisions of the PPC rather than finding cases of simple breaches of law. Inconsistency

in decisions indicates biased decisions and corrupt intentions in decision making. As importantly, the study does not only identify and analyses such cases, but it also systematically categorizes them under the principles they breach. Lack of compliance and inconsistency in decision making indicates that the agency problem dominates the PPRS.

3.6 Methods and Data collection

Methods used

This study employs a qualitative methodology when it comes to methods used for data collection and analysis. Considering the fragility of corruption as an area of study, the author has carefully chosen research methods that appropriately address the research question and enhance the explanatory power of independent variables. After operationalization, some variables can be fully explained by methods that justify well the data collection and provide a replicable analysis of such data, by fulfilling the quality control criteria. Using the type of data at our disposal to explain the compliance with principles in the public procurement system and identification of red flags that warn fraud (Indicator 1.1 and 1.2), the method of documentary research is appropriate and fits well with the aim of the study. In this case, official documents such as Public Procurement Bulletins, allow for a systematic collection of data and provide a good baseline for the researcher to study the phenomenon.

For other variables, the data collected might provide biased, uncompleted or unclear information. When the variable addresses a sensitive topic of study, the method triangulation is used to provide complementary information gathered to support and validate findings provided by different methods. Through method triangulation, a researcher can rise above biases that stem from single methodologies and overcome the deficiencies that flow from using just one method (Mouton 2001). As discussed, corruption is difficult to capture and study, especially when the source from which information is gained is potentially involved in corruptive acts. Thereof, the indicator that study compliance and consistency in decision making of the PPC (Indicator 2.2) collects data from different sources using complementary methods. Firstly, questionnaires are used to collect information on compliance and consistency in decision making of the PPC. To enable the in-depth explanation of collected data and the validity of information, informal interviews are conducted with a representative number of this target group and other related sources. Moreover, the researcher has scrutinized all decisions that are reported in questionnaires and interviews to ensure that the information collected was correct. In such a way, the results of each method are verified and the information's dependability and trustworthiness are ensured

The institutional system where actors operate as well as the monitoring and control mechanisms in the PPRS (Indicators 1.3 and 2.1) are explained by information collected from semi-formal interviews. These interviews are conducted with a representative number of experts at national and international level, covering both the public and the private sector of the Public Procurement System. Questions for interviews are drafted following a desk research on the PPS and a detailed study of selected theories which answer the research question.

The combination of all methods can fully explain all variables in this study which are operationalized in relevant indicators. Data collected fulfils the quality control criteria and methods used validate findings of each other, whenever appropriate. Methods used are analysed in the following sessions.

3.6.1 Questionnaire

Questionnaires or surveys on corruption can provide data on perception of corruption (beliefs), attitudes toward corruption (evaluation) and experience of corruption (our own or others'). Considering the importance of this method to feed the policy making process, surveys are analysed as to understand the climate of a business environment in countries. Findings from questionnaires on *international reports* are used as secondary data

and provide grounds for the analysis of the quality of good governance and integrity in public procurement in Albania and beyond. Documents such as Table of Eleven (T11) Key Determinants of Compliance (Netherlands, 1993) and Tools for assessing corruption and Integrity in institutions (USAID, 2005) are used to measure compliance, corruption and integrity of a regulatory area. Benchmarking Public Procurement (Global Indicators Group, World Bank Group, May 2014) and OECD Principles for Enhancing Integrity in Public Procurement in the form of an OECD Recommendation (OECD, 2008) are used as policy documents to measure integrity in public procurement. Documents such as SIGMA's key requirements for public procurement (principle 10-14) (SIGMA, 2013 and 2015) and Annual Reports of EU Commission to Albania provide sources for the researcher to analyse issues of good governance and decision making in the PPRS in Albania.

On the other hand, the study uses other secondary data collected from *international surveys* in the field of public procurement. Data from surveys like The Global Competitiveness Report, Competitiveness Index, Corruption Perception Index and Enterprise Survey are used to analyse where Albania stands in terms of favouritism, bribery, irregular payments, juridical independence, etc. compared to other countries in Europe and the region.

However, specifically in the PPRS field, perception and attitude surveys do not provide trustworthy information on the elite driven interest to collude. Moreover, the rent-seeking behaviour of firms cannot be measured by counting on firms' perception, as it could involve a tautological approach in the study. Thus, to collect timely, accurate and tailor-made data, the study relies on information collected from experiences of actors participating in the PPRS. This information is collected via a questionnaire sent to economic operators and in-depth interviews made with selected economic operators and intermediates in the PPRS.

First, *a questionnaire* is prepared to collect data from economic operators that have submitted a complaint to the PPC. The questionnaire¹⁶ is composed mainly of opened questions, and asks economic operators about their (or others) experiences with inconsistent decisions issued by the PPC. Questions on the third review instance (the court) are also asked, focusing on experiences of economic operators with challenging PPC decisions at the court and the output of such initiatives. The questionnaire is a computer based tool, prepared on survey monkey platform. Before distributed to the targeted group, it was tested to four economic operators

¹⁶ Link of the questionnaire <https://www.surveymonkey.com/r/CVY6F5J> .
A copy of the questionnaire can be found as Appendix

during the first week of data collection. After the testing phase the questionnaire was sent to 38 economic operators in the field of *security guards service* that are, for the most part, actively participating in the PPRS. Considering the type of questions, the questionnaire is classified as a qualitative method which involves mainly open-ended questions and a critical analysis to interpret data.

This sample of analysis is chosen because, as a category, it has the highest number of bids (almost 95% of total PPC decisions on tender procedures) and it comprises both low and high value contracts. Moreover, the net profit assigned by economic operators in biddings is very small (0.000007 euro the average) and this does not motivate economic operators to challenge PPC decisions in court (as mentioned above, when the court upheld the decision of the appealing economic operator, it provides the lost profit only, the value of which is sometimes 0.5 euro). Considering this, the sample is appropriate as it represents a case where the PPC has almost always the final say on the awarded reviewed contracts.

Questionnaires collected identified 25 decisions which represented cases of breach of law and inconsistency between two or more decisions published by the PPC. During the three months that the questionnaire was being filled in by the economic operators, the researcher contacted by phone several economic operators that were unable to use internet as a

tool to report data and facts and met them personally to collect the questionnaires.

3.6.2 In-depth Interviews with economic operators

In-depth interviews, as a research data technique, allows us to understand peoples' experiences and perception on the topic discussed through a planned series of discussion topics. In order to have a deeper understanding of the experiences with corruption and bribery in the public procurement review systems, the researcher conducted two *in-depth interviews* with economic operators and one interview with an intermediate, who consented to be interviewed by keeping their anonymity. Thus, for ethical consideration this study does not reveal their profile. Due to their direct cooperation with the PPC and the conflict of interest of the interviewees with the topic of analyses, confidentiality issues were proclaimed as highly important.

Interviews were conducted after the questionnaire data was collected and processed. Building upon their findings, interviews discussed reasons and motives of corruption exchanges to understand the opinion of groups of interest on the decision making of the PPC. Methodologically speaking, interviews were informal, and questions were not too rigid, as the topic of discussion was sensitive and sometimes uncomfortable. However, during

these informal interviews, the researcher managed to touch upon the main issues of the interview protocol. Data collected was followed by critical analyses from the researcher.

Through these interviews, the researcher was not only trying to check the validity and reliability of findings collected from questionnaires, but he or she was trying to explain issues such as firms' collusion with the PPC, the use of intermediates to contact PPC staff, the approach to bid rigging deals, the share the value of contracts awarded from joint ventures, etc. Moreover, questions were asked related to reasons firms enter into the PP system for the purpose of getting information from applicants on a specific call in order to use this information for upcoming calls.

Regarding the joint ventures in the majority of cases, the value is shared in the favour of the firm that represent the consortium (joint venture) and is listed first in procurement documents.

The logic of using questionnaires as a method to collect data was to ask economic operators that share a previous negative experience with the PPC. However, this implies the risk that their answer might be biased. On the other hand, these firms might have an opened conflict of interest, providing as such incorrect information. Thus, data collected is cross-

checked with information from in-depth interviews and further scrutiny of such documents from the researcher.

3.6.3 Semi-structured Interviews

This research involved purposeful sampling which is selecting rich cases for in-depth study (Macmillan and Schumacher, 1993:379) of the chosen research topic. When choosing interviewees, the researcher was attentive to avoid selection bias. The sample of interviewees is chosen within a wide and diverse pool of public procurement experts, composed of national and international experts, officials, and employee of PPC. The interviewing process was preceded by an informal conversation in order to have a deeper elaboration of the topic of the interview with a more relaxed and informal approach during the interview.

Semi structures interviews¹⁷ were conducted with EU experts (SIGMA mission in Albania, EU Delegation in Albania), international experts working on corruption in public procurement (Transparency International in UK), and former staff of State Commission of the Supervision of Public Procurement in Croatia, etc. From these interviews, international experience is analysed and compared to the national context.

¹⁷ A document of interviewee can be found as Appendix

Three interviews were conducted with persons who know the PPRS in detail and possess a good knowledge on the activity of firms collaborating with public procurements institutions. One of the interviewees is acting as an intermediate in the ‘public procurement market’ as he refers to. The second interviewee is a former employee of the PPC who has worked in the institution for a period of three years. The third interviewee is a former head of contracting authority, working in a public High Education Institution in Albania. Since all three interviewees asked for full anonymity, the study cannot reveal their identity.

The interview has a topic guide that included opening and core questions mainly related to the institutional system of public procurement where actors operate, the monitoring and control mechanism in the PPRS, rules and procedures of the system (standstill period, annulment of contract, investigation of PPC staff, institutionalized informality, etc.), both in Albania and abroad. Findings on international studies and national documents were discussed to set the ground for further questions. During interviews, questions were neutral, with no double meaning that indirectly suggest specific answers or the response that the researcher would like to hear. All five interviews lasted 30 minutes – 1 hour and were conducted in Albania, Austria and UK.

3.6.4 Documentary research method

As a research method, documentary method is the collection of an amount of reliable information that provides information on the phenomena that the researcher wants to study. Based on secondary data, this method does not only collect and categorize information, but it also interprets data to provide scientific findings. As a method, it requires rigorous attention to the type of document that will be scrutinized, and the sample selected to generalize findings. In the context of this research, this method was used to systematically analyse the principles of the public procurement system, as a very important part of the study. Thus, Public Procurement Bulletins for a period from 2011-2015 were analysed with the aim of retrieving information on the applicability of main principles that govern the management of the public procurement system such as competition, equal treatment, non-discrimination and transparency. This method is not used to complement the other methods (like in the case of questionnaires and interviews), but it is purely used to satisfy the research purposes related to the application in practice of principles of the Public Procurement System. The selection of such types of documents and its representative sample ensure that the quality control criteria for handling documentary sources such as authenticity, credibility, representativeness and meaning, are addressed (Scott,1990:1-2). While the study considers for review all

Public Procurement Bulletins for a period of 5 years, it provides a representative sample of the totality of available documents. Furthermore, given that the Bulletins are official documents retrieved from impeccable sources, containing the overall information needed on public procurement procedures, they are typical of its kind and clear. Thus, the study involves authentic, credible and meaningful data for research.

As a research method, documentary research requires from the researcher a good level of understanding in the field addressed by the documents. Having this in mind, the researcher has consulted experts from the Public Procurement Agency to gain experience and better understating on the data provided in such documents.

Using the documentary research method, the researcher identified and listed all firms that have been awarded a contract after a complaint to the PPC. The value of the contract is in the official national currency, as published in the official Bulletins is mentioned as well. Firms have been filtered according to the value of contracts awarded, number of contracts awarded, number of complaints submitted, participation in joint ventures, etc. All these categories of firms and contracts have been processed in excel and are elaborated to elucidate data that provides information on the basic principles of PPS.

To sum up, data is collected and scrutinized under the following criteria:

- 1- Data collected from all bulletins includes the overall number of contracts that have been awarded after a complaint is submitted at the PPC (review contracts);
- 2- A more detailed overall review of all contracts awarded for a 5-year period of 20 firms (dragged from top 50 firms with the highest value of reviewed contracts) is conducted;
- 3- The period of data collection covers bulletins from two subsequent governmental periods, Democratic Party and Socialist Party (2.5 years for each period);
- 4- Data collected cover the period when the PPRS was functioning in full capacities, thus the PPC is the main review body in the PPRS;

It is important to mention that the structure of data collected for each principle is similar; containing the name of firms, the value of contracts, joint venture or not, having the same format of data collection (excel tables). The following will explain the usage of data collection mechanisms for each principle of public procurement reviewed.

Competition

Indicator [1] One bid contracts; Indicator [2] Bid rigging

Electronic public procurement data is available online, thus all contracts that have been awarded to bidders are systematically collected in a bulletin published by the Agency of Public Procurement. Over a three-year period

(2013, 2014, 2015), the one bid contracts have been identified for all categories of public procurement in Albania, and it composes the first data collection of public procurement contracts of this size. This 3-year period is chosen because during these years PPC has been working in its full capacities. A number of the 122 bulletins for the period 2013-2015 are scrutinized one by one. Based on these documents collected, one bidder contracts are identified. This systematic evidence is further aggregated to indicate the firms that have mostly been awarded such contracts.

It is important to note that one bid contracts are identified based on the number of economic offers/tenders received for the bid, referring to criteria for the submission of the economic offer form. Having said this, this category excludes cases when other firms have registered on the online procurement system but have not submitted a valid financial offer before the deadline.

Findings for one bid contracts in Albania are compared to data retrieved from TED (Tenders Electronic Daily) with other EU member states.

Bid rigging is identified and analysed through informal in-depth interviews.

Transparency

Indicator [1] No Calls for bid- negotiated contracts

These types of data cannot be collected in Public Procurement Bulletins.

As the name shows, these types of contracts are unpublished, since the Contracting Authority does not publish the call for bids for the public. CA makes instead a negotiated procedure with a chosen firm. Having said this, this data is retrieved by the annual reports of APP, for the year 2013, 2014, 2015, which is used as an official public source.

Cost-efficiency

Indicator [1] Democratic and socialist governing period; Indicator [2] Upper / Low Threshold

Referring to other previous studies, the cost efficiency is calculated as a proportion to the value of awarded contracts and the thresholds of published tenders. The analysis of the cost-efficiency uses data from bulletins of the Public Procurement Agency. In order to include both parties' governing period, bulletins for the period 2011-2015 have been scrutinized to identify awarded contracts which have to undergo a review process. Thus, the analysis of cost-efficiency refers to a period of 5 years (2011, 2012, 2013, 2014, 2015), including two governmental periods, 2011 – August 2013, two and a half years when the Democratic Party was

in power and September 2013 – 2015, two and a half years when the Socialist Party took power. An overall number of 261 bulletins is scrutinized. For the period led by the Democratic Party, the number of reviewed contracts is 374 while the total number of firms being awarded a contract is 246. During September 2013 – 2015, a period when the Socialist party was in power, the number of awarded contracts is 1746, while 669 firms are winners of these contracts.

The total number of reviewed contracts is aggregated by the name of individual firms and the value of contracts awarded. The study measures the cost efficiency for 20 top firms using a selection of firms based on their financial capacities (chosen among 50 top firms) and sectors they operate (including construction, pharmaceutical sector, IT, city cleaning, number of contracts, security, etc.). The cost-efficiency analysis for the selected firms is compared between Democratic and Socialist governing periods.

Impartiality and Independence from political control

Indicator [1] Firms appearing and disappearing when the governmental elite changes

With the change of the government, the intersection of interests between the public and private sectors does not happen. What happens is that the power among economic operators is re-balanced since actors and rules

of game have changed with the new government in power. In total, 261 bulletins for the period 2011-2015 are scrutinized, 139 bulletins for 2011-August 2013, two and a half years under the DP governance, and 122 bulletins for September 2013-2015, the same time span under the SP governance. All awarded reviewed contracts are identified, divided in two periods, listed according to the value of contracts awarded. Afterwards, the top 50 firms from the Democratic and Socialist governance are compared to each other to understand the consistency of firms' financial capacity from one government period to the other. The analysis considers the 50 top firms with the higher value of awarded contracts, as their potential of being influential to the government increases due to their financial capacity.

Indicator [2] New registration and overestimated public contract

The study aims to analyse the behaviour of new firms registered for the first time to participate in the procurement system during the electoral year and compare it to the previous and subsequent years. In order to provide a deep analysis of the activity of individual firms, the researcher officially asked the APP for the list of firms registered for the first time in APP electronic system for the period 2012, 2013 (the electoral year). Having an electronic account in the APP allows firms to participate in public procurement procedures. The database sent from APP showed that during

2012, 371 new firms were registered in the APP electronic system. During the electoral year, 2013, this number was almost five times higher, reaching 1576 firms. Considering this meaningful finding, the analysis of public procurement activity of each individual firm was scrutinized using APP bulletins for the period of 2013-2015. Overall, 150 firms out of 1576 had been awarded contracts during 2013-2015. This data was further analysed to reveal red flag cases which indicate collusion and corruption.

3.7 Limitation of the research thesis

The PPRS includes the first instance, the Contracting Unit (established in public institutions and awarding the contract); the second instance, the PPC and the third instance, the Administrative court. For purposes of this study, decision making (DM) in the PPRS implies solely the DM of the agent - the PPC and the DM of the principal - Prime Minister. Reasons for doing this are not only related to the weak role of the first and third instance in decision making within the review system, but most importantly the role of PPC, as a strong institution with important competences which is able to elucidate the overall system. As far as the final administrative decision is concerned, PPC decisions are administratively final and practically it grants the final say to awarding

reviewed contracts (as is explained in Chapter 4, considering the weak role of the administrative court as the third instance).

Moreover, the study is concerned with decision-making in institutional setting and it does not include an analysis of the individual or professional capacities of employees. Thus, their unintentional malpractices in the field of public procurement are considered as intentional. This decision is considering that PPC staff have undergone a series of training by international experts, thus their capacities are considered developed.

Also, issues of under-resourced institutions are not considered as part of the analysis, as it is a temporary issue and the institution. The study deals with more systematic issues rooted in the institutional settings.

It is important to mention that the list of contracts awarded to firms might have slight errors, as identified when scrutinizing the contracts in Bulletins.

Regarding limitations on methods used and data at the researcher's disposal, there is a potential risk that the information provided in the Public Procurement Bulletins might not be exhaustive, with regard to the real number of contracts awarded. This is because Contracting Authority (CA) might sometimes not send the Contract Award Notification to be published in the bulletin, aiming to falsely lower the number of

Notification of Contract for no-competition bids. However, since this procedure is compulsory by law, these cases are sporadic and does not influence the finding of the study.

<u>The type of corruption/capture by firms in the study is concerned about</u>		
	Yes	No
1.1 Ex ante capture ¹⁸		x
1.2 Ex post capture ¹⁹	x	
2.1 Individual corruption (PA theory)	x	
2.2 Systemic corruption (networks and alliances that rely on exchanges)	x	
2.2.1 Grand corruption	x	
2.2.2 Administrative corruption	x	

Lastly, this research does not analyse the concession law and public-private partnership (PPP) which are in fact a form of governmental spending. Due to PPP complexity and several differences, it needs to be considered as separate research.

To sum up, the frame of the research topic is presented in the following tables:

¹⁸ We define *ex-ante capture* as influences exerted on rule-making processes, i.e. when firms or other interest groups try to shape the design of regulations in their favour *before* they come into effect.

¹⁹ *Ex-post capture*, in turn, aims at influencing the administration in order to circumvent or curb existing rules, and thus is better explained by models of bureaucratic corruption. However, ex-post capture may also include legislative corruption, if pressure is exerted in order to change or to shape rules during renegotiations in favour of the regulated industry

<u>The type of institutions the study is concerned about</u>		
	Yes	No
1.1 Informal Institutions: neo-patrimonial theory (social and cultural reasons of corruption)	x	
1.2 Formal institutions: neo-institutionalist theory	x	

<u>The type of procurement procedures the study is concerned about</u>		
	Yes	No
1.1 Unpublished negotiated procedures ²⁰	x	
1.2 Published negotiated procedures	x	
1.3 Concessions		X

3.8 Concluding remarks

In this chapter the researcher justifies the theoretical and empirical choices made for the research. The chapter argues that the Public Procurement Review System is chosen because it is an understudied and highly complex field of research. Moreover, it argues and justifies the selection of Albania as a case study; the uniqueness of the country compared to other countries as the ‘least likely’ case study which poses a test for the theoretical scholarship, the puzzle of using complementary theories to explain the case study, etc. In terms of the theoretical choices, it is argued that before starting with the analysis of the principal theory, the study need put forth the application of capture of state theory, whose explanatory power is applicable in unstructured settings like Albania. This theory

²⁰ This provision excludes 31 % of procurement procedures from the review mechanism (EU Report for Albania, 2015)

complements principal agent theory, as a preceding phase, aiming at identifying the role of actors within institutions. Theories are also used to explain contexts for which they are developed and validate findings and conclusions of each other.

The study identifies the dependant and independent variables. There are two dependant variables (i) actions and inactions of institutional actors within the PPRS and (ii) the institutional settings where institutional actors operate and two independent variables (i) the capture of state and (ii) the agency problem and two independent variables. Explanatory variables are further operationalized into measurable indicators.

Lastly, the study presents and justifies the qualitative methodology it applies, and methods chosen for this research. Usage of complementary methods, as well as individual methods, is justified for each indicator. Triangulation of methods is used to achieve a trustworthy result and to cross-test the validity and reliability of the findings of each method. The method and the category of data collected are described. It is argued that there is necessary and sufficient primary and secondary data collected to allow the empirical analysis to develop successfully.

Chapter IV: Capture of state

4.1 Action and Inaction of Groups of Interest

Theoretically and practically speaking, it is very difficult to identify pervasive clientelism. On one hand, institutional actors operate under the scrutiny of their institutional role which, in unstructured settings, manifests an independence due the lack of transparent and accountable mechanisms. On the other hand, groups of interest have a clear set of targets related to maximization of profits, and whenever the system allows, this widespread interest takes part as the main game in the town, compromising all rules and procedures accordingly.

Corruption and collusion are difficult to be captured directly, unless captured in flagrante or in other cases of scandals of government abuse with public funds. Trying to curb corruption, many mechanisms are established to investigate channels through which groups of interest (firms) seek to capture the state, while approved documents and protocols are set to institutionalize anti-corruption measures. Some important international documents developed in this regard are the Declaration Against Corruption and Bribery in International Commercial Transactions in 1997, approved by the United Nations General Assembly and the OECD Convention on Combating Bribery and its Recommendation, as an anti-corruption instrument which poses standards to criminalise bribery of

foreign public officials. From the onset, it is important to state that this academic research systematically tracks and scrutinises, by indirect mechanisms, the deviant behaviour of actors, in order to explore and understand reasons why it occurs.

4.2 Perception as a tool to measure corruption

One of the widely used approaches to indicate and measure corruption is the perception and experience of economic firms and experts. Usually, the government measures corruption from evidence based on the perceptions of business people and country experts (Susan Rose-Ackerman, 2005), thus results drawn from such surveys are used to advocate campaigns and initiate actions of curbing corruption in national and international policies. Perception on corruption may not accurately show the level of widespread corruption, but it indicates the approach and relations that citizens and businesses establish with state institutions and vice-versa. ‘High levels of corruption affect citizens’ trust on state administration and hence the administrators’ propensity to take or offer bribes. It induces business people to assume incorrectly that bribes are “needed” to secure business in the country, which “improves” the opportunity for agents to profit from the bribery and allows corruption to escalate’. (Søreide, 2014:49). High level of perceived corruption increases the chances to find a corruptive collaborator and reduces the moral concerns.

Many cross-country surveys are designed to measure perception on corruption and informal payment, trying to increase the attention of governments on the importance and sensitive nature of the issue. Business Environment and Enterprise Performance Survey represents the first attempt to measure some aspects of the incidence of capture across the transition countries (Cepniku, 2004). World Economic Forum, Enterprise Survey Data, Global Competitiveness Report, Corruption Perception Index, etc. publish comprehensive reports which examine the perception of firms regarding business environment topics such as the competitiveness landscape, performance issues, infrastructure, as well as issues related to governance such as perceived level of corruption, access to finance, regulatory framework, etc.

Despite international measures and mechanisms in place, empirical facts show that corruption is a widespread global phenomenon, not exclusively for developing countries, while the level manifested in developed countries is in any case lower than in developing countries.

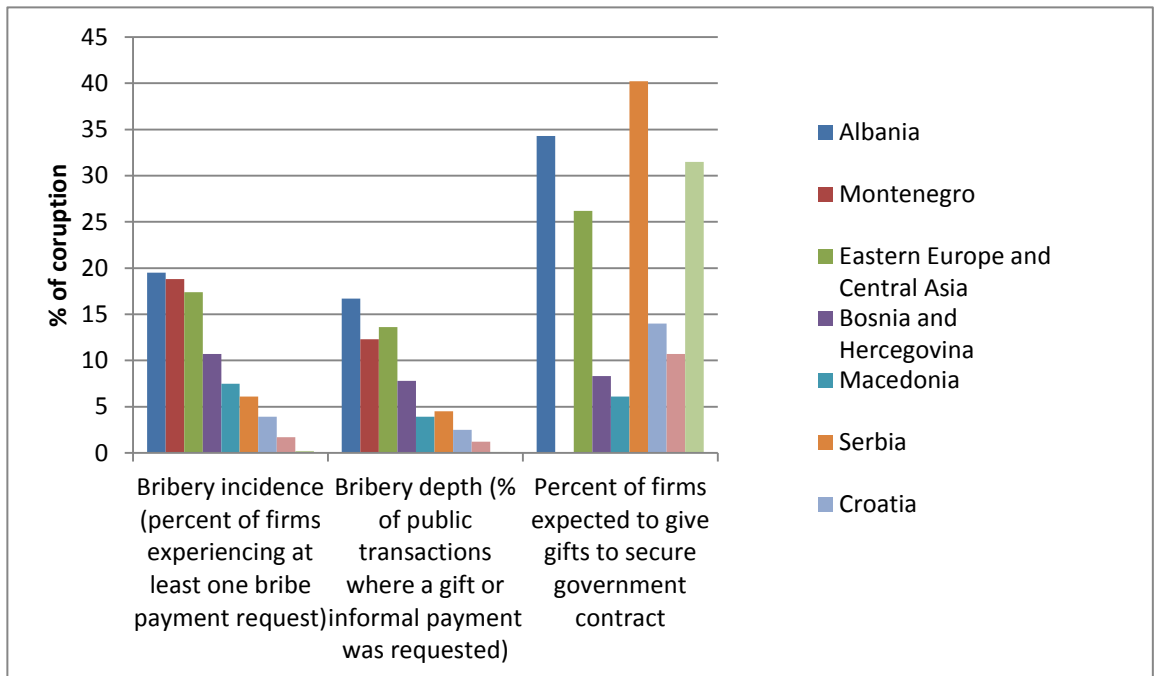
Generally speaking, perception surveys are used to understand the climate of business environment, most importantly at a comparative level. Considering that public procurement presents, in fact, a business relation between firms and state actors, the climate of business environment is a highly important aspect to be taken into consideration when studying it.

Although the analysis of perception survey does not consider the specificity of individual countries, nor does it distinguish reasons or provide explanation of facts, they allow researchers and policy makers to understand which country and what areas are prone to corruption and have a high-risk of dishonest business practices. Thus, for purposes of this study, it is important to have a picture of the overall perception of firms, experts and analysts of the level of corruption in Albania and how the country is doing on business and performance of institutional actors.

In order to do this, data collected from perception surveys such as Enterprise Survey Data of the World Bank, the Transparency International Corruption Perception Index and the Global Competitiveness Index for the period 2013-2015, are analysed to understand how Albania is positioned in comparison to other countries in the Balkans and other regions for the period 2013-2016.

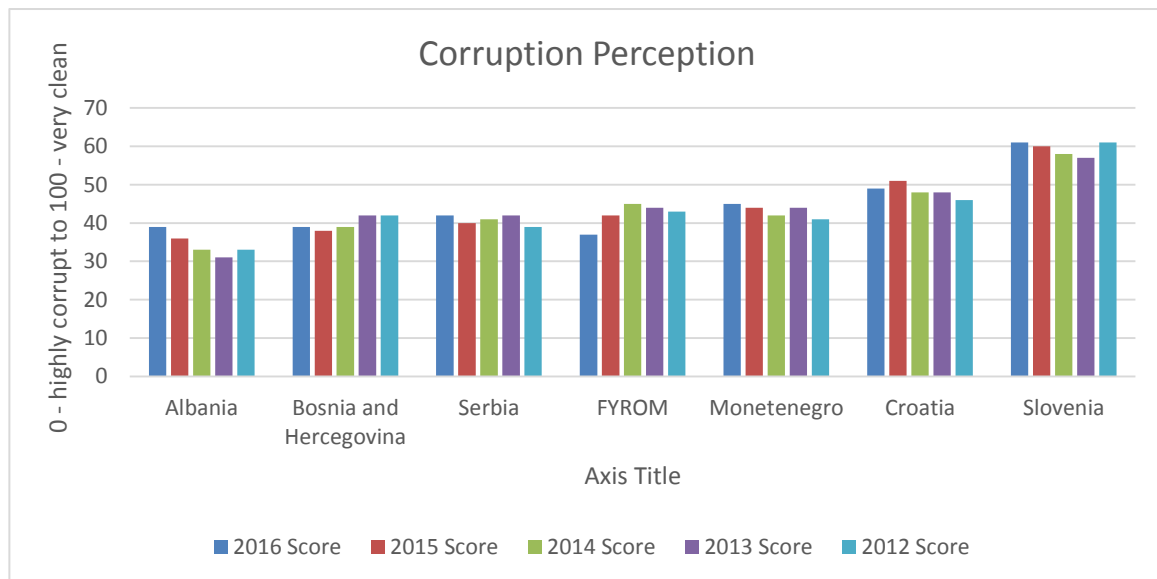
The Enterprise Survey Data follows a global methodology of data collection and is conducted by the World Bank. Its research aims at understanding how the business environment affects firm performance in developing countries. For the year 2013, the survey shows that 34.3% of firms in Albania expect to give gifts to secure government contract compared to the level of this indicator in the Eastern Europe and Central Asia of 26.2%, to high income countries of 10.6% and all countries of

27.0%. This indicates that from a comparative perspective, Albania has the highest level of firms which expect to give gifts to secure government contracts, and continues to lag behind all Balkan neighbours, except Serbia. The following graph illustrates these data:



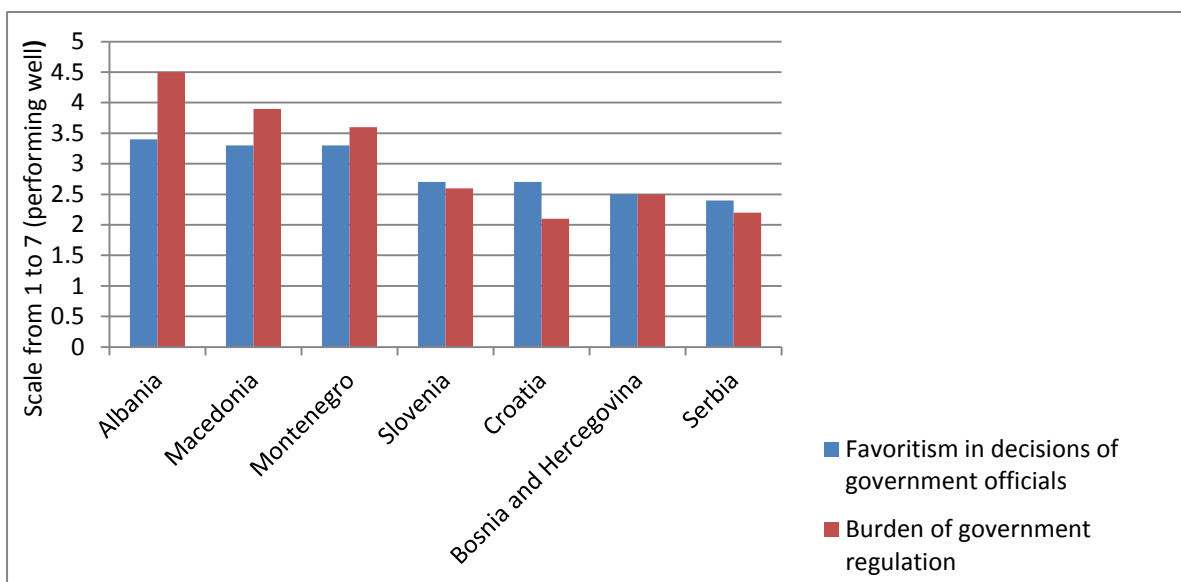
As the graph shows, Albania has the highest percentage of firms that indicate their experience with Bribery incidence (% of firms experiencing at least one bribe payment request) and Bribery depth (% of public transactions where a gift or informal payment was requested) compared to all other countries in the Balkans.

The Transparency International Corruption Perception Index ranks countries on the level of corruption in public sectors. Corruption Perception Index measures the perceived levels of corruption as determined by expert and opinion surveys. The global average score is 43 (0 - highly corrupt to 100 - very clean), indicating endemic corruption in country's public sector. Not only Albania falls below the midpoint, but when compared to other countries in the Balkan region, during the period 2012-2015, Albania is the country with the highest level of perception on corruption. In the survey of 2014, Albania holds the 110th place out of 174 countries around the world, indicating a disturbing perception on corruption environment

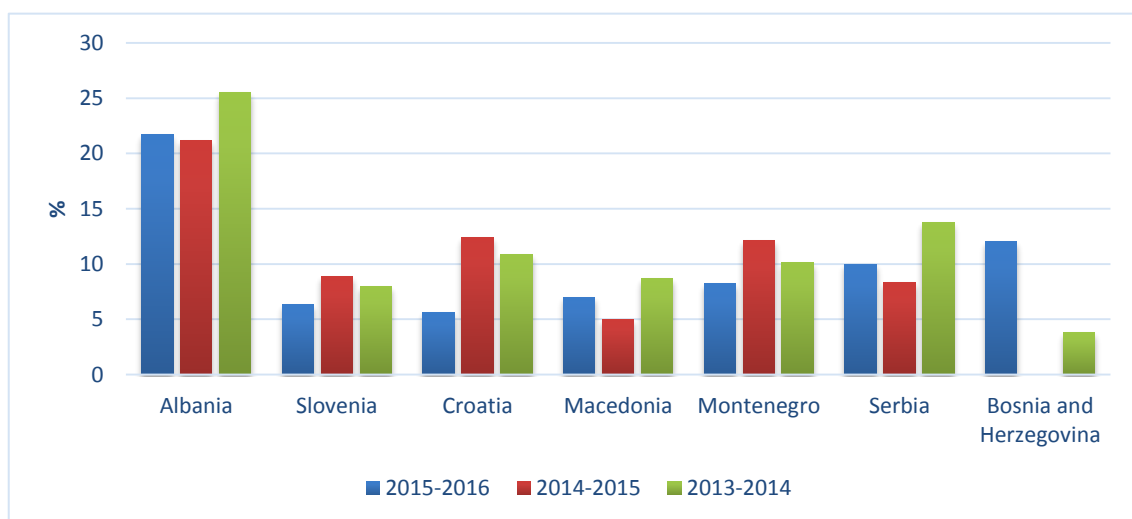


The Global Competitiveness Index assesses the competitiveness landscape of 140 economies and the driving factors of productivity and prosperity. The Report of 2015-2016, provides an overview of competitiveness performance to understand complex phenomena related to competitiveness and global risks. The GCI combines 114 indicators to capture concepts that matter for productivity²¹. However, this study is concerned only with the first pillar of the survey: Institutions. Two questions are important for the scope of this study, the one that indicates favouritism in decisions of government officials and the burden of government regulation. It is seen that Albania has the highest score of corruption among all countries in the region of Balkans, showing that the perception of firms in Albania toward well-functioning institutions is lower than in other countries in the region. The way government actions and behaviours are perceived underpin the idea of weak institutions in the country.

²¹ http://www3.weforum.org/docs/gcr/2015-2016/Global_Competitiveness_Report_2015-2016.pdf



When asked about the most problematic factors for doing business, firms rank corruption as one of three most important factors. Corruption in Albania is the most important factor to hinder competitiveness, while in a comparative approach, Albanian firms suffer from corruption much more than other countries in the region, when it comes to business endeavours.



As a general remark, all reports indicate that Albania has the highest level of corruption and informality. During the period 2012-2016, Albania stood far behind other countries, compared not only to the average of regions like OECD, Europe, Eastern Europe and Asia, but also to other countries in the Balkans.

4.3 Corruption beyond perception

Many scholars critique perception surveys, especially when it comes to the importance they have on influencing policies. Limitations on specificity and explanatory power toward phenomena, question the accuracy they provide as a method for policy making and advocacy. Following this, one can say that corruption measured by perception surveys does not indicate the real instances of corruption.

Corruption in public procurement is categorized as *collusive* corruption rather than *extortive* corruption. *Extortive* corruption takes part when the one who pay the bribe feels compelled to do so and is easily captured by perception survey. While *collusive* corruption (Auriol, 2014) – is in benefit for both parties, it is hard to capture by using perception surveys. This thesis is concerned with issues of collusive corruption; thus perception surveys do not provide a significant research method for the study.

Moreover, perception surveys do not distinguish causes of corruption for individual countries, while corruption is a factor closely related to the cultural environment and socio-economic aspects of a country (World Bank, 2011). Empirical research has shown that corruption manifests itself differently in each country, thus the need for micro level studies of corruption in specific public and private sectors with evidences would be more concrete and relevant to the environment (Rose-Ackerman, 1980). In order to address the above-mentioned challenges, this study goes beyond the analysis of information provided by perception surveys. The following section scrutinises the behaviour of interests groups. Analysis of competition, transparency, cost-efficiency, and impartiality and other red flags will reveal how groups of interests influence decision-making of state actors in public procurement in Albania. Moreover, deficiencies of the procurement system are tackled to explain how they allow for corruption and collusion to take part.

The following section tries to identify *the real role of institutional actors* in the PPRS, by scrutinising actions and inactions of non-institutional actors, outside the institutional domain. Having done this, the path to PA theory, to explain institutional actors responsible for corruption in Public Procurement Review System, is open.

In order to understand if the state actor is captured, and therefore he or she plays the role of an agent, the analyses will (i) measure compliance with public procurement principals, (ii) identify red flags (iii) analyse the institutional system where actors operate.

Public procurement is regulated in a way that basic principles such as economy and efficiency, non-discrimination, competition, equality, fairness, integrity, transparency are respected. Similarly, Albanian law on public procurement no.9643, dated 20.11.2006, amended, specifies in its second article the main principles of public procurement. These principles will be analysed to reveal the fragility of the environment in which firms operate in the domain of public procurement. The behaviour of firms is an important indicator for the integrity of the public procurement system. Their fair play is important to understand the performance of institutional actors, the tendencies to shift from the institutional role, actions and inactions.

In order to fully understand how firms behave it is also important to analyse variances of their behaviour and performance in public procurement when new government elite changes. Examples of firms appearing and/or disappearing from competition in public procurement when a new government comes to power, indicate the mutual effect that both institutional and non-institutional actors have on each other and the

fact that politics influences the behaviour of firms and vice versa. Moreover, newly registered firms that successfully gain overestimated public contracts despite the lack of previous experience is an indication to collusion. Thus, this section employs a contextual framework which systematically analyses the impact of change of governing elite composition in Albania (2013) in clusters and state capture.

Lastly, the institutional system will be analysed to understand how the institutional setting allows shifting and capture to become the rules of the game.

4.4 Measuring compliance with principles in public procurement system

The analysis is based on the assumption that when firms gain public contracts under questionable conditions of competitiveness, transparency and cost-efficiency, impartiality, public and private elites have managed to seize control of government contracting to their own benefit (Fazekas, Tóth, 2014). Questionable decisions of public officials indicate that public interest is often made subservient to private interests.

According to TED (Tenders Electronic Daily), the online version of the 'Supplement to the Official Journal' of the EU dedicated to European

public procurement, the overall performance of Public Procurement is measured by nine indicators, where the most important ones are competition and transparency: One Bidder (single-tender), No Calls for Bids (negotiated procedure). Other indicators are Missing Values, Missing Calls for Bids and Missing Registration numbers. Public procurement principles that govern the management of the system are extrapolated from Treaties, court rulings, EU Directives and the national law. The following section will analyse the behaviour of firms in Albanian public procurement environments to understand the compliance with procurement principles and to compare it with EU Member states

4.4.1. Competition

In both national and EU legislation on public procurement, competition is one of the main principles which tries to ensure a fair procurement process which leads to awarding of competitive price contracts. Moreover, competitive contracts increase opportunities for bidders to participate in tenders, promote efficiency by avoiding unduly favouring or disadvantaging economic operators, cartel activity and dominance of certain abusive behaviour. Many international mechanisms like OECD Global Anti-Corruption & Integrity Forum, Tenders Electronic Daily (TED) platform, etc. look at the danger of distorted competition in Europe today, aiming at curbing collusion, cronyism and graft.

The total amount of contracts awarded without competition is composed of published contracts that received a single-bidder and negotiated contracts that are not published for bidding. However, the single-bidder (or one bidder) contracts are considered as an indicator of competition while the negotiated contracts are usually classified under the transparency principle.

Indicator [1] One bidder (Single bidder contracts)

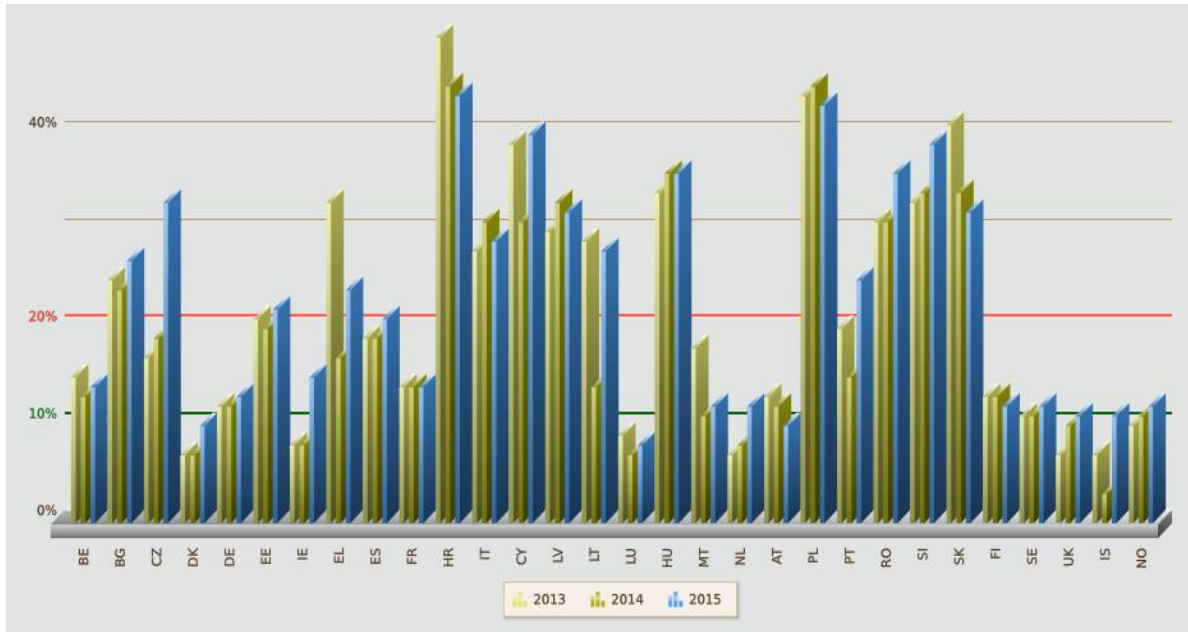
Single bid or one bid contracts are all published contracts that received only one bidder. For competitive procedures, the high number of single-bid contracts are a signal of either disorder in the PPS or the misbehaviour of public authorities such as drafting tailor-made selection criteria, alerted upcoming contracts before the official announcement, or collusion with groups of interests such as cartels, bid-rigging, etc.

Despite the promotion of competitive procedures internationally, the threat of distorted competition is emerging, as according to Tenders Electronic Daily (TED), the average of calls for tender that received only one bid is 21.5% in 2013, 19.6% in 2014 and 22.5% in 2015 for member states in European Union.

As shown in the chart below, single-bid contracts are a prevailing phenomenon, especially for ex-communist countries where single-bid

contracts are not the exception, but the rule (The Economist, 2016). For countries like Croatia, Poland, Slovakia, Hungary, Cyprus, the pressure of young democracies to survive the threat of collusion is high.

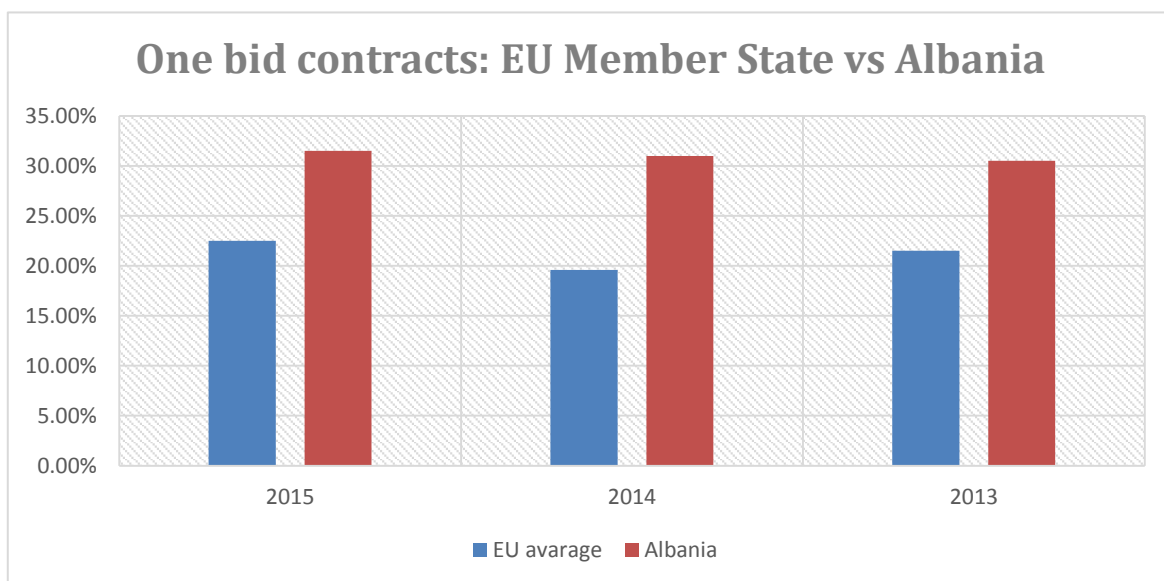
Indicator – One Bidder Contracts



Source: Tenders Electronic Daily TED

Compared to the level of competitiveness in EU Member State procurement contracts, Albania has a higher number of contracts awarded without competitive procedure. These are the contracts that have either received one bid only or have been awarded without publishing the call. Regarding the one bid contracts, Albania grants around 5-10% more contracts than the average percentage of the EU.

One bid contract		
Year	EU average	Albania
2015	22.50%	31.50%
2014	19.60%	31%
2013	21.50%	30.50%



Electronic public procurement data is available online, thus all contracts that have been awarded to bidders can be systematically tracked in the bulletin published by the Agency of Public Procurement. Based on this data, the ‘one bidder’ contracts are identified. However, according to TED, in some countries, it may be the case that non-publication of Contract Award Notification is falsely lowering the number of Notification of Contract (TED, 2016).

Such contracts can be estimated either based on their value or based on their count. Over a three-year period (2013, 2014, 2015), the one bid contracts have been identified for all categories of public procurement in Albania. These data are further aggregated to indicate firms that have been awarded such contracts and the value of contracts awarded. The overall percentage shows the annual trend of single-contracts in relation to the total number of awarded contract (excluding the annulled contracts).

A unified method of listing the name of firms and the value of contracts allows an analysis of each indicator in this session, by identifying firms that have a higher risk to corruption.

Data collected shows that the total number of one-bid contracts for the year 2013 is 1084, 130 of which are contracts for oil and petrol. The total number of awarded contracts published in the online system for all categories (supply, service, work) in 2013 is 3439 contracts. This indicates that 31.5% of awarded contracts published on the online PP system are granted with a single bidder procedure.

The following table presents only firms/joint ventures that have gained at least 10 contracts with a single tender procedure. At the bottom of the table, there is the total number of one bid contract awarded for 2013. It does not contain the tendering procedures for petrol, since the price in this case is fixed. The table below shows that the firms that have been awarded

the highest number of one bid contracts have also the highest value of contracts awarded.

One bidder contract 2013		
Firms/Joint Ventures	Value of contracts awarded	No of contracts
Intermed	150,003,114	22
Megapharma	168,323,728	16
Alstezo	23,455,299	15
Europetrol sha	34,932,114	15
M.B.Kurti	25,847,452	14
Aldoschfarma	25,238,250	13
Medi-Tel	15,164,790	12
Messer Alba Gaz	54,017,598	12
Biometric Albania	114,182,900	11
ALBDRIN	17,600,871	10

In 2014, the total number of awarded contracts published in the online system for all procurement categories (supply, service, work) increased from 3439 in the previous year to 4673 contracts. A number of 1437 contracts (133 out of which are contract of oil and petrol) was awarded following a single bidder procedure. This show that 31% of awarded contracts published in online PP system are granted with a single bidder during 2014. Data shows that in 2013 and 2014, there is a consistency in firms that have been awarded the highest number of one bid contracts. Megapgarma and Intermed are the first two firms that have the higher

number of one bid contracts, doubling the number of contracts from 2013 to 2014.

One bidder contract, 2014		
Firms/Joint Venture	Value of contracts awarded	No of tenders
MegaPharma	126,376,746	41
Intermed	61,418,079	26
Trimed	46,292,303	21
Incomed	56,026,112	20
Rejsi farma	28,049,348	20
Florfarma	31,835,788	18
Aldoschfarma	8,564,019	16
Alstezo	68,868,150	15
DELIA IMPEX	24,583,721	15
KTHELLA	31,054,046	14

In 2015, the total number of awarded contracts published in the online system for all procurement categories (supply, service, work) is 3973 contracts. A number of 1215 contracts (64 out of which are contract of oil and petrol) was awarded following a single bidder procedure. This show that 30.5% of awarded contracts published in online PP system are granted with a single bidder. The consistency in 2015 does not stand for the same firms, but for the same sector in which firms operate. Equally in 2013 and 2014, firms that have been awarded the highest number of one bid contracts are from the pharmaceutical sector (Omega Pharma, Aldosch Farma, FLOR Farma)

Single Bidder Contracts, 2015		
Firms/Joint venture	Value of contracts applied	No of tenders
Omega Pharma	26,089,194	46
Aldosch Farma	47,961,777	36
FLOR Farma	92,136,448	36
KRIJON	73,972,030	22
Biometric Albania	128,137,375	19
INFOSOFT SYSTEM	511,555,235	14
ALSTEZO	26,264,150	13
Genius	26,841,311	12
Fufarma	12,154,245	11

In 2015, the value of one bid contracts had almost doubled compared to previous years, even though the total amount of contracts awarded in 2015 is 700 contracts less than those awarded in 2014. This is a signal that raises the awareness that not only the count, but also the value of one bid contracts indicates competition issues.

Indicator [2] Bid rigging

Bid rigging is a phenomenon that impacts the competition directly in public procurement. Firms make compromises and deals not only with public officials, they also make agreements among each other to avoid competition. Bid rigging is a form of collusion which manipulates the fair play in procurement procedures in favour of an agreed bidder. It is many times called “soft corruption”, where tenders are manipulated in order to

award contracts to favour bidders without technically breaking any laws (The Economist, 2016). However, this practice is sanctioned in the majority of national legislations. One of the earliest acts drafted in this respect is the Sherman Act of 1890 which makes bid rigging illegal under U.S. antitrust law (OECD).

Cartel practices can include informal agreements to assign “turns” among members for winning public bids (Transparency International, 2012). Forms of bid rigging are bid suspension, bid rotation, market allocation, etc. Cover bidding is one of the most frequent forms which include cases when the competitor agrees to submit a bid that is higher than the one that is planned to be the winner, or a bid that is unacceptable for the tender evaluation commission. Where corruption occurs in a public contract, collusion between bidders – for example, in the form of compensatory payments or the granting of subcontracts – may be necessary to ensure that losing bidders do not expose the illegal conduct to the public authorities (OECD, 2011).

Bid-rigging is also connected to principles of competition and transparency. While both principles encourage the increased number of bidders in opened calls, bid rigging is also mitigated when the number of bidders is increased. On the contrary, the fewer the bids, the higher the risk of bid-rigging, says Mihaly Fazekas, a corruption expert at Cambridge

University (The Economist, 2016). In such cases, the price of goods, services and work offered by the bidder is unfair and artificially raised. Many times, a part of this price turns into compensation payments for submitting high or other “failed” bids (Transparency International, 2012).

Bid-rigging shows that collusion in public procurement does not necessarily involve a public and a private actor to take part. Collusion through bid-rigging is often facilitated by having an “insider” in the public agency that provides the bidders with information necessary to rig bids in a plausible manner and may even operate as a cartel enforcement mechanism (OECD, 2011).

4.4.2 Transparency

Indicator [1] No Calls for bid - Negotiated contract

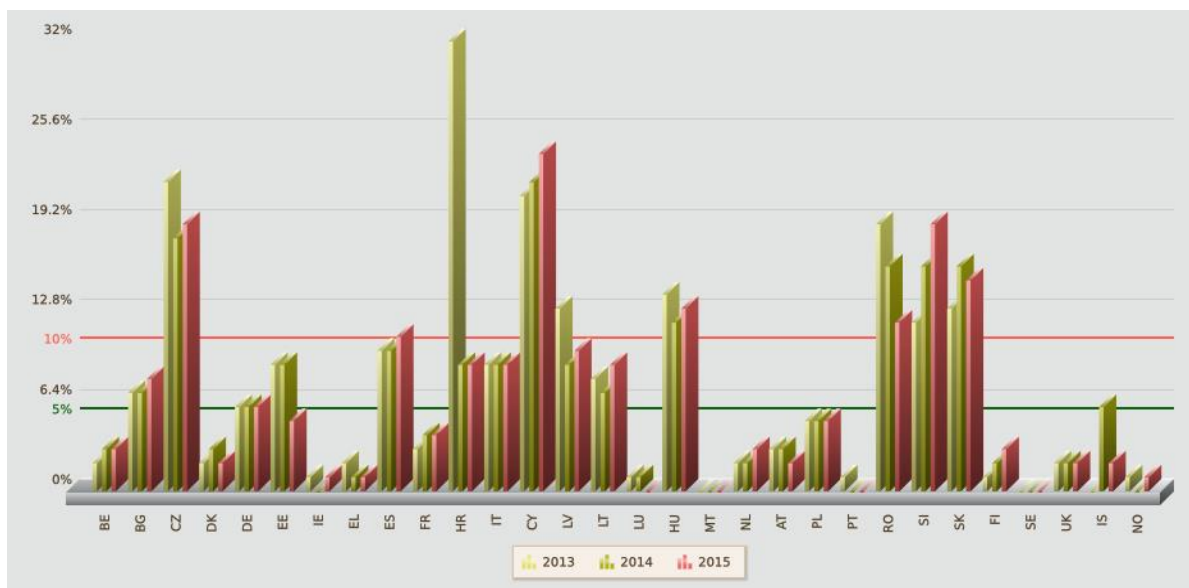
Another type of contract that does not include competition is the negotiated contract that does not publish *a call for bids*. By law, these contracts are justified by the urgency of specific procurement contracts and few other provisions detailed in article 33/2 of PPL. no. 9643 dated 20.11.2006, amended by law no. 131/2012 article 3/19 ‘Negotiated procedures’. The law stipulates that negotiated contracts are those procedures where the contracting authorities consult the economic operators of their choice and negotiate the contract terms with the firm.

However, recommendations of State Supreme Audit (SSA) and the EU Delegation in Tirana recommend that such contracts should be kept to a minimum number. The PPL forces CA to respect competition in the first place. Thus, unpublished contracts are considered to hinder not only the principle of competition, but also the principle of transparency. In its generic form, transparency has been defined as “openness, honest visibility and ready accessibility to information” about individuals, businesses and government entities (Rawlins, 2008), which allows for a more efficient allocation of public resources and savings for governments. Academic scholarship stipulates that transparency is a principle to mitigate the adverse effects of corruption. Public procurement is a system where corruption is particularly rampant, thus the lack of transparency spawn local markets, characterised by limited competition, dominant providers and an absence of “best-in-class” suppliers (Monse E.G.M). Transparency is not a sufficient condition to eliminate corruption, but it directly enhances competition and monitoring systems which influence curbing corruption. Hence, transparency has been recognized as a necessary condition for reducing corruption (Jeppesen, 2010 & Bovis, 2009) and the as a major pre-requisite for enhancing integrity and deterring corruption in public procurement (Beth, 2005). Opacity in public procurement renders procedural checks and proportional penalties

difficult. Transparency avoids this obstacle while increasing the fear of players that they may be exposed and likely punished, which compels them to desist from corrupt practices (Kolstad & Wiig, 2009).

Data from the Tenders Electronic Daily (TED) show that countries with a higher percentage of one bid contracts tend to have the higher percentage of no calls for bids (contracts awarded through a negotiated procedure). As the graph show countries like Croatia, Slovakia, Hungary, Cyprus are almost the same countries which manifest less competitiveness and low transparency in awarding procurement contracts, both in one bid contracts and no call for bids contracts.

Indicator [2] No Calls for Bids



Source: Tenders Electronic Daily (TED)

According to the Public Procurement Bulletin, the total number of negotiated contracts for year 2013 is 1713 contracts. Compared to the total contracts awarded for 2013, no call for bids contracts compose 33.2% of the total number of awarded contracts (5152 published and negotiated contracts in total for 2013). For the year 2014 no call for bids contracts compose 31.2% of the total number of contracts (6794 published and negotiated contracts in total for 2014) and in 2015 this percentage is 40.5% (6679 published and negotiated contracts in total for 2015). As the graph show, compared to the average number of negotiated contracts in EU member states, Albania seems to lack the successful practices.

The following table is a summary of the above-mentioned analysis which incorporates the number of public contracts awarded during the period 2013-2015 and the number/percentage of contracts that lack competition and transparency (one bid or no call for bid).

CONTRACTS WITHOUT COMPETITION	2013	2014	2015
Awarded contracts with a published call	3439	4673	3973
Awarded contracts with no calls for bid	1713	2121	2706
Total number of awarded contracts (with/without published call)	5152	6794	6679
One bidder awarded contracts	1084	1437	1215
Total number of awarded contracts without competition	2797	3558	3921
% of One Bidder awarded contracts	31.5%	31%	30.5%
% of no bid contracts	33.2%	31.2%	40.5%
% of contracts without competition	54%	52%	59%

Cases of published contracts that received a single-bidder and unpublished bids with negotiated contracts, compose the total amount of contracts awarded without competition. Thus, the total number of such contracts is more than half of the overall number of contracts. For the year 2013, 54.2% of contracts are awarded without competition, in 2014 this number is 52.3% and in 2015 this number is higher, reaching almost 60% of the overall number of contracts awarded that year.

4.4.3 Economic (cost)- efficiency

A very important principle of public procurement is economic-efficiency. Efficiency is an indicator of a fair procurement process, in terms of public money saved by achieving the best value for money. Efficient procurement involves choosing the supplier who can supply the desired goods or services at the lowest price (or, more generally, the best “value for money”) (OECD, 2011:56). Beside the administrative check and the selection criteria fulfilled, the financial offer is a determinant factor to select bidders, in proportion to the quality of the service, goods or work offered. The United Nations Convention against Corruption (UNCAC) consider measurement of efficiency as a tool to combat corruption.

As this study is concerned with Public Procurement Review System, it targets contracts that are awarded after PPC review. Having said this, the study uses official data collected from Bulletins of the Public Procurement

Agency for the period 2011-2015 to identify such contracts. On one hand, the threshold and the value of contracts allow the identification of the individual firms' activity within the PPRS, being the focus of this research. On the other hand, the study uses this sample of contracts to measure cost-efficiency in public procurement. The analysis of cost-efficiency refers to a period of 5 years (2011, 2012, 2013, 2014, 2015), including two governmental periods, 2011 – August 2013, two and a half years when the Democratic Party (PD) was in power, and September 2013 – 2015, two and a half years when the Socialist Party (PS) took the power. This allows for a comparative analysis of governments' approach towards the public procurement system and the potential variances of behaviour of firms when government elites changes.

Indicator [1] – Democratic and Socialist governing periods

After all Bulletins published in APP are scrutinized for the period 2011-2015, the total number of reviewed contracts are aggregated by the name of individual firms and the value of contracts awarded. It is important to mention that table no.8 and no.9 do not show the real financial capacity of firms, because these contracts are awarded many times to joint ventures, and in this case, firms have shared the value of such contracts. From semi-formal interviews with public procurement, it is understood that the value is often shared in the favour of the firm that represent the consortium (joint

venture). Considering the answers from interviews it is decided that when two firms participate in the consortium, the value of the contract is shared 60% / 40% in favour of the firm representing the consortium. When there are three firms participating, the value of the contract is shared 40% / 30% / 30 %. As there is no public information available on the real share of contract values among firms, the above division is considered valid for this study.

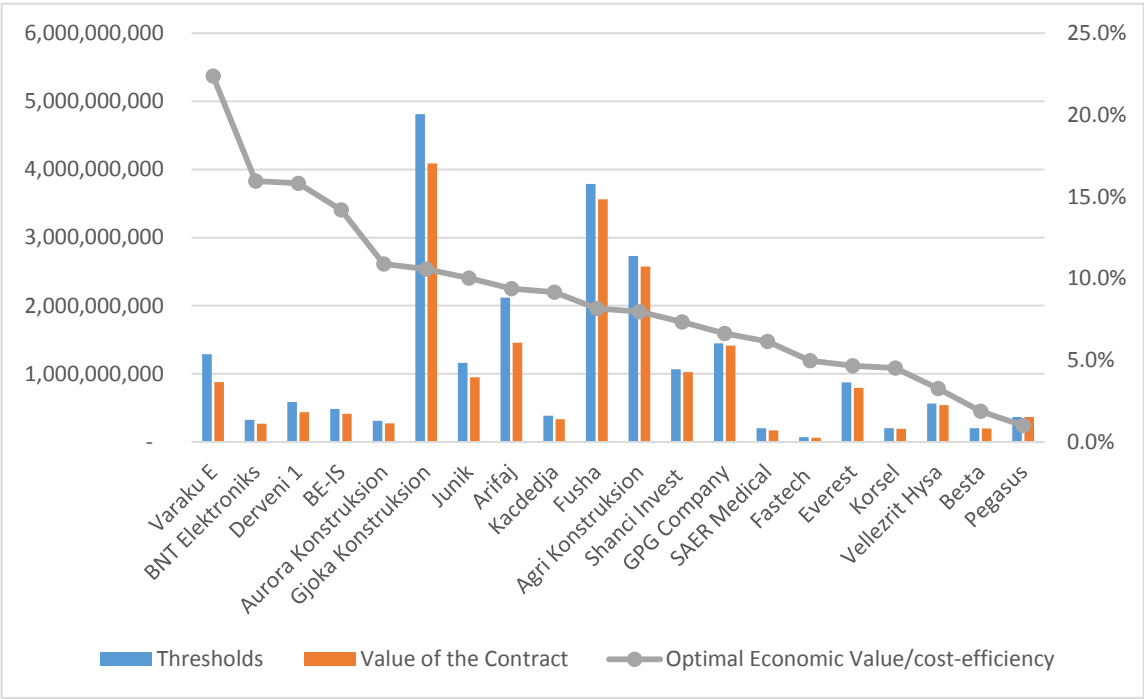
The study measures the cost-efficiency for 20 top firms using a selection based on their financial capacities (chosen among 50 top firms) and sectors they operate (construction, pharmaceutical sector, IT, city cleaning, number of contracts, security, etc.). This analysis includes all contracts awarded to that firm for the given period. The cost-efficiency of individual contracts is calculated as the ratio of the difference between the threshold and the value of the contract and the threshold as a whole.

The cost-efficiency analysis for the selected firms is compared between Democratic and Socialist governing periods.

The graph shows 20 firms out of 50 top powerful firms in the PPRS, during the PD governance (2011-august 2013). It presents cost-efficiency of firms in a descending order. The highest percentage of cost-efficiency is reached by Varaku E, scoring 22.4%, considered as cost-efficient

procurement. However, the percentage drops for other firms to 1% for Pegasus.

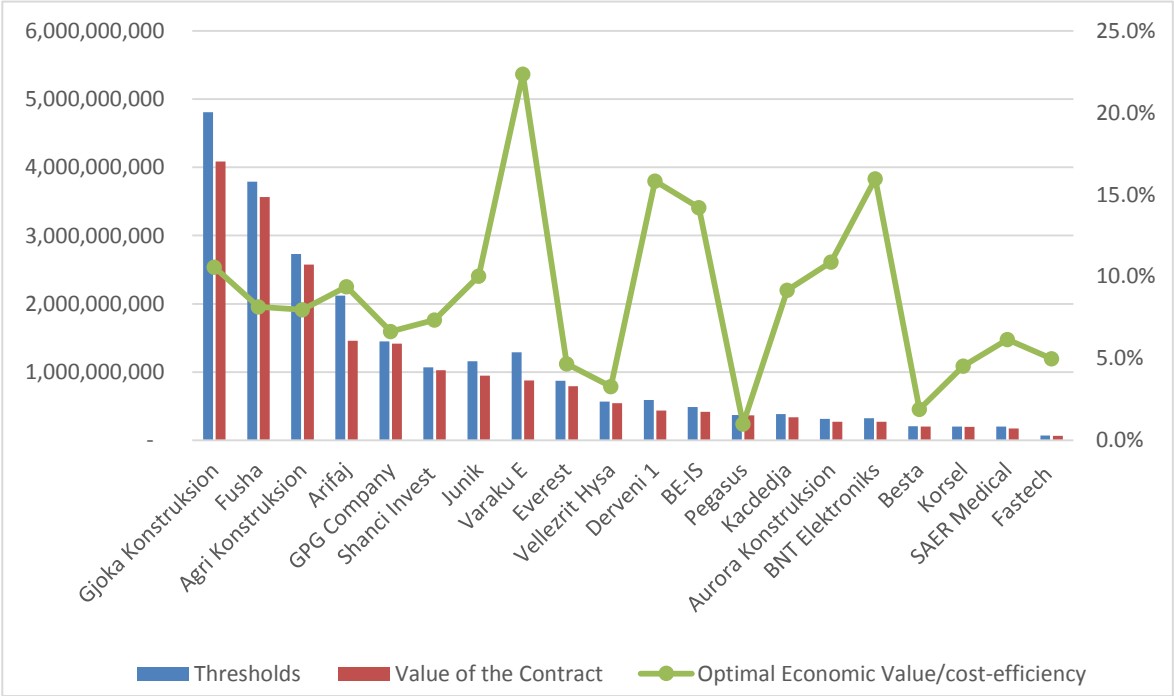
The graph shows that the wealthiest firms stand in the middle of the chart, showing an average cost-efficiency from 7% to 10%, while firms with low financial capacity tend to have either a high level of cost-efficiency (11%-22%) or a low level of cost-efficiency from (1%- 6%).



The following graph presents the financial capacity of firms in a descending order. It is clear that firms that have a high financial capacity are more stable and consistent in their trend of cost-efficiency. The first seven most powerful firms have almost the same level of cost-efficiency

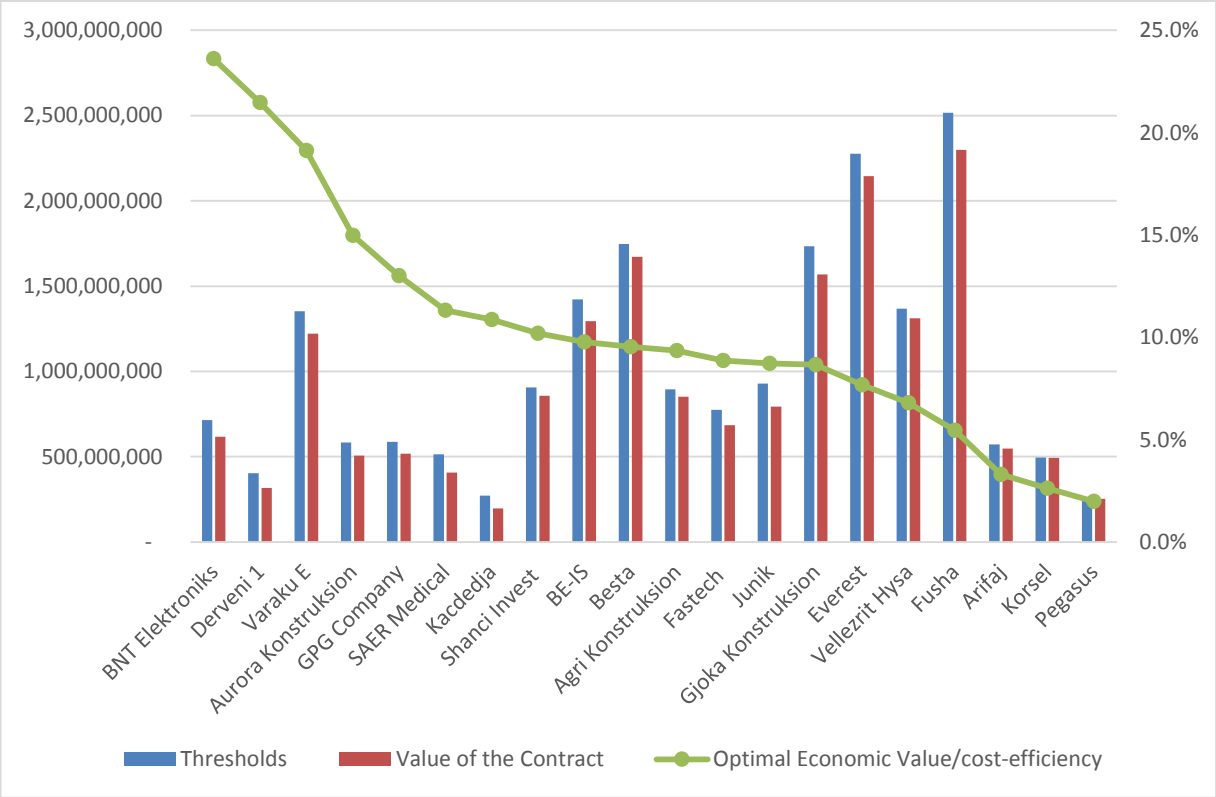
(10%-7%). Other less wealthy firms do not share a clear trajectory or a consistent trend as far as cost-efficiency of their contracts is concerned.

The graph below shows top 20 firms during the PS governance (September 2013-2015). The highest percentage of cost-efficiency is reached by BNT Electronics in the level of 23.6%, considered to deliver



efficient procurement. Other firms have a lower percentage of cost-efficiency until reaching the lowest level of 2% for Pegasus. Compared to the situation during PD governance, the efficiency is slightly improved, however this difference is not significant. Similarly, the situation during

democratic governance, the relation of cost-efficiency and the financial capacity of firms (value of awarded contracts) follows the logic that most powerful firms stand in the middle of the chart, showing a stable cost-efficiency of 6% to 10%. Other less wealthy firms do not share a clear trajectory or a consistent trend as far as cost-efficiency of their contracts is concerned.



The following table provides a comparison of cost-efficiency of firms between two periods of government. During the Socialist governance the cost-efficiency of awarded contracts in public procurement, for the sample

of 20 firms selected, raised 2% compared to the Democratic governance. However, the average cost-efficiency for the whole period of 2011-2015 is less than 10%, which shows a difficult path for public procurement to ensure value-for-money contracts.

Name of the firm (top 20)	Cost-efficiency PD (2012-2013)	Cost- efficiency PS (2013-2015)	Average efficiency (2012-2015)
Varaku E	22.40%	19.10%	20.70%
BNT Elektroniks	16.00%	23.60%	19.80%
Derveni 1	15.80%	21.50%	18.60%
Aurora Konstruksion	10.90%	15.00%	12.90%
BE-IS	14.20%	9.80%	12.00%
Kacdedja	9.20%	10.90%	10.00%
GPG Company	6.60%	13.00%	9.80%
Gjoka Konstruksion	10.60%	8.70%	9.60%
Junik	10.00%	8.70%	9.40%
Shanci Invest	7.30%	10.20%	8.80%
SAER Medical	6.10%	11.30%	8.70%
Agri Konstruksion	8.00%	9.40%	8.70%
Fastech	5.00%	8.90%	6.90%
Fusha	8.20%	5.50%	6.80%
Arifaj	9.40%	3.30%	6.30%
Everest	4.70%	7.70%	6.20%
Besta	1.90%	9.50%	5.70%
Vellezrit Hysa	3.30%	6.80%	5.00%
Korsel	4.50%	2.60%	3.60%
Pegasus	1.00%	2.00%	1.50%
Avarage	8.70%	10.40%	9.60%

The analysis of contracts awarded divided between the periods of PD and PS governance, helps to understand the behaviour of firms when governmental elites changes, when it comes to their bid's value. The analysis shows that cost-efficiency of firms does not change drastically when the government elite changes, especially for powerful firms.

Indicator [2] Upper/Low threshold

Despite the time-period of different governments in power, another important indicator to measure cost-efficiency is the comparison between values of contracts awarded. According to the national legislation, Decision No.46, dated 21.01.2009 amended, stipulates the level of thresholds in public procurement. According to this decision:

(i) upper threshold is:

- 1 200 000 000 ALL for work contracts;
- 200 000 000 ALL for service and good contracts;

Average 700.000.000

(ii) lower threshold is :

- 12 000 000 ALL for work contracts;
- 8 000 000 ALL for service and good contracts;

Average 10 000 000

Since this study does not analyse public contracts according to the type of the offer (service, good, work), it considers an average for each category. Thus, four categories of values of contracts are created (see Table below), and average efficiency is measured accordingly. The number of contracts for 20 firms is calculated and divided into categories, (see details of data collection in table no.6, no.7). The result of this analysis is presented in the following table.

Value of contracts	Average cost - efficiency (2011-2015)
> 700.000.000	6.50%
700.000.000-10.000.000	10.44%
10.000.000-800.000	8.32%
< 800.000	9.06%

The table shows that the highest level of cost-efficiency is found in contracts with the value 700.000.000-10.000.000 ALL, while high value contracts of more than 700.000.000 ALL tend to have a lower cost-efficiency of 6.5%.

4.4.4 Impartiality and independence from political control

Academic literature offers several studies related to the mutual dependence of the political sphere and groups of interest. This relationship is better observed when the change of government brings a new party in power, thus a new political elite. Rent-seeking and opportunistic

behaviour are strategies of groups of interest as there is an increasing need of political actors for political survival. 'Due to high sums involved and the important economic scope and nature of public procurement [...] a considerable attraction is presented for engagement in corrupted and unethical activities on behalf of procurement officials' (Soudry, 2007:3). Not only technocrats are self-seekers, politicians also trade-off between private and the public interest. On the other hand, 'the strongest interest groups, who manage to use the political power in their favour, will also gain benefits and in this way will try to protect themselves from the political moral hazard' (Haruta et al, 2009:12). However, the independence of interest groups from the government seems utopic, as long as the review decision making institution (PPRS) is part of the governmental settings and does not have an independent legal status. Powerful firms understand clearly that the final decision for public contracts is not a tool in the hand of technocrats only, but politicians take an important role in this regard. In conditions where the government is faced with competition and must exert effort to remain in power and seek support from outside - the relationship between principal and agent will change (Lambsdorff, 2001).

Indicator [1] Firms appearing and disappearing when the governmental elite changes

This indicator uses as a sample top 50 firms that have been awarded a reviewed contract for the period 2011-August 2013 and September 2013 – 2015. For the purposes of this study, the top 50 firms for each government period are compared to each other to understand the consistency of firms' financial capacity from one period to the other. The assumption that there would be a drastic change in firms' wealth when government elite changes, shows that firms have selectively engaged interests with government officials. Data collected from the public procurement bulletins show that for the first period, the number of contracts reviewed is 374, out of which 246 firms have won a contract. For the second period the number for such contracts is 1746, out of which 669 firms won a contract. The number of contracts reviewed and successful firms is higher during the socialist governance compared to the democratic governance, meaning that the role of the PPC in the process is increasing. This is primarily related to the stability of the electronic system of public procurement, the functioning of the PPC as a well-established body and the increased value of public spending. However, interviews with economic operators show that many other reasons explain the increased role of the PPC in public procurement stand beyond institutional explanations. During PS governance, the trust of firms in the decision making of Contracting Authorities (CA) is diminished due to a series of

mistakes and their unqualified staff in the field of public procurement, due to electoral change of staff in public institutions. Addressing issues of trust to CA, they refer to the PPC for remedies. Another reason is related to the delay that the review system brings to the process of signing the contract. Firms that are implementing a contract that is re-opened for bids, are interested in delaying the process of signing a new contract with potential new operators, because this delay may bring the case that firms sign negotiated contracts with contracting authorities. Another reason is related to the payment firms make for the review of CA decision. Despite the number of reviewed contracts has been increased during 2013-2015, the fee for reviews has not changed proportionally. This motivates firms to send complaints for review, given that they pay the same amount for a service that is worth more.

As a general rule, the legislative framework in public procurement requires that bidders show their experience in similar contracts (DCM no.914, dated 29.14.2014 and PPL), which ensures the Contracting Authority that the firm has the capacity to successfully fulfil the contract. Following this logic, firms that have been actively participating in the PPS during 2011-2013 are more likely to be successful in subsequent years. However, the comparison of the top 50 firms for both periods, show that 60% of these firms during 2013-2015 are not only missing from the top

50 firms in 2011-2013, but they are not even part of the total 246 firms that have been awarded a reviewed contract in 2011-2013. The sample indicates that in almost 2/3 of the cases, firms' participation in public procurement review system is inconsistent when the government elite changes. Capture theory explains that favouritism changes the rules of the game, since the probability to win is in favour of firms with governmental connections.

50 top firms of reviewed contracts

2013-2015 (Socialist Party)		2011-2013 (Democratic Party)	
Firms	Sum of Contracts	Firms	Sum of Contracts
Kastrati sh.a	3,147,718,892	Alfredo Grassi S.p.A	947,245,140
Kastrati	1,139,594,380	D&E	631,496,760
GJOKA KONSTRUKSION	1,129,588,617	KEVIN KONSTRUKSION	551,744,021
KPL	848,421,271	Junik	364,449,890
EVEREST	698,165,053	Alba Konstruksion	226,160,636
Infosoft System	633,914,143	NDERTIM MONTIM PATOS	199,877,245
Rosi spa Albania	569,904,408	Helios Catering	189,051,892
JUBICA	566,336,245	viktoria invest	166,197,190
Fusha	549,218,522	Medicamenta	149,985,551
Vellezerit Hysa	543,892,422	Adel Print	116,051,019
EURO- ALBA- EA	526,641,153	Albavia	110,066,935
RS & M shpk	503,879,750	Kpl	109,943,112
Alko Impex Construction	384,922,568	2AT	109,697,000
JUNIK	368,311,678	Shansi Invest	109,679,600
Varaku E	362,495,994	Fusha	105,471,944
AGRI KONSTRUKSION	344,533,139	Infosoft office	78,376,608

Shansi Invest	339,342,318
IDK Konstruktion	335,919,833
G.P.G Company	330,734,442
Aurora Konstruktion	324,324,700
CURRI	322,033,875
MEGAPHARMA	310,690,457
Album 1	310,117,000
ALBTIEFBAU	291,334,897
Shpresa	285,915,075
BNT ELECTRONIC'S	281,524,221
SAER MEDICAL	264,280,750
Adel CO	250,001,925
SPEA INGEGNERIA EUROPEA S.P.A	247,015,000
BE-IS	245,402,657
Korsel	238,282,870
BAJRAMI N	230,025,070
Arifaj	229,790,909
DELTA PHARMA AL	203,975,061
BESTA	202,523,555
Rej	198,062,504
TTA-Alba Lam	192,638,631
Fastech	187,487,086
Med – Fau	186,480,000
B – 93	185,602,370
Derveni – 1	184,106,492
PEGASUS	176,689,000
KACDEDJA	171,176,966
GPG Company	170,504,624
HTT- High Tech Tests	169,300,000
R & R Group	165,950,233
O.E.S DISTRIMED	163,654,306
ANK	161,685,946

SALILLARI	77,280,137
Ndregjoni	73,243,900
Jogi	66,075,360
KOMBEAS sha	65,844,592
H.E.L.D.I Construction	60,176,741
Sori-Al	58,458,086
SIRETA 2F	57,648,431
AES COMMUNICATION	52,417,700
Shpresa	51,994,595
Midac-Al	50,430,000
Korsel	49,085,047
R & T	48,874,143
M. Lezha	45,999,000
Nazeri 2000	41,581,279
BNT Electronics	39,297,232
Hastoçi	38,681,397
Eurogjici Security	35,720,451
Selami	35,540,665
Montal	34,770,935
Nika	34,527,244
Alpen Puliti	33,620,000
Liqeni VII	33,356,535
Edicom	33,325,714
Shkelqimi 07	33,293,912
CO 1 Rroku Konstruktion	33,017,213
Aurora Konstruktion	32,545,059
Alb – Shpresa	31,283,014
Varaku E	29,612,412
Cara mat	28,693,819
Biometric Albania	27,945,490
Zeqiri	27,899,988
Infosoft Systems	27,879,218

ALBA KONSTRUKTION	160,185,482
Infosoft Office	154,624,493
SINTEZA CO	152,962,124
4 A-M	151,954,684
INTERMED	147,421,796
NAZER 2000	136,225,560
BEAN	134,710,692
Alb Leaa International	132,994,899
Denis – 05	132,920,090
Arbëria sha	129,488,646
MARSI & ARMEMIL	129,080,827

Total value 34,048,556,856

Leon Konstruksion	27,701,035
3-A PROFIL	27,539,300
Gjoka Konstruksion	27,182,591
4 A-M	26,599,311
Elba	25,960,000
C.E.C – 11	25,376,000
DIMEX	23,958,245
Jodi Kompani	23,456,211
Everest	22,237,690
Toni Security	21,884,109
Datech	19,574,849

Total Value 6,853,870,342

Powerful firms appearing and disappearing from the PPS when the government indicates the shift of the economic power from some groups of interest to another, due to their political connection.

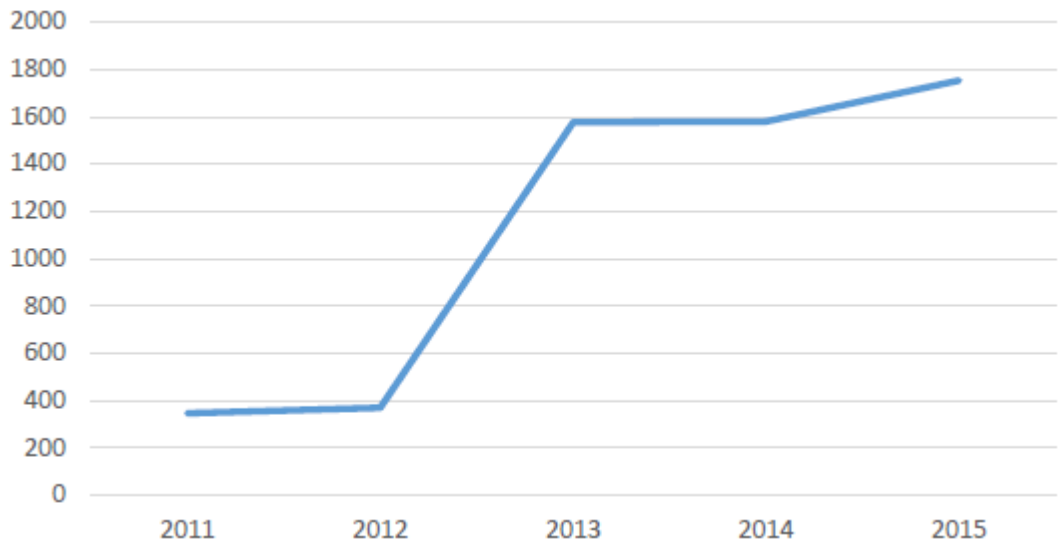
Indicator [2] Electoral year – new registration and overestimated public contracts

The results of new emerging powerful firms when the governing elite composition changes, calls for further research on the changing behaviour of firms. Thus, the focus of analysis shifts from the most powerful firms in the review system (top 50 firms), to the new firms registered during the electoral year for the first time in the electronic portal, which allows them to participate in the procurement system. For the year 2013, when general election took part, the graph shows a drastic increase in the number of

firms registering in the APP electronic platform. The researcher contacted the APP by official email to request the list of firms registered in 2012 and 2013. This data allows us to see the difference in numbers of firms registered in two subsequent years, one electoral and non-electoral year. Secondly, the intention is to scrutinize the financial capacity of new emerging firms in public procurement in order to understand cases of governmental favouritism toward particular firms which have no previous experience in public procurement and suddenly become financially meaningful.

The database sent from the APP showed that during 2012, 371 new firms were registered in the electronic system. During 2013, this number was almost five times higher, reaching up to 1576 firms. In the APP annual report (2015, p. 57), this drastic change is explained by the new legislation on public procurement rules in 2013 which changed the formula of small-value contracts. This situation forced many small firms to register in the APP electronic system. Although this might be one objective explanation, informal interviews confirm the existence of opportunistic behaviour of firms with a strong support from the new government.

Firms registering in APP electronic system



Source: Public Procurement Agency, 2015

Using the data on Bulletins on the activity of each of the above-mentioned firms in the PPS, shows that only 150 firms out of 1576 registered in 2013, have been awarded contracts during 2013-2015, and many of the cases are a joint venture. Young firms use their participation in JV to gain experience (similar contracts) and be able to participate in upcoming calls.

On the other hand, there are some firms that participate relatively less through consortiums, but still gain high value contracts despite their lack of experience in public procurement. These are not small firms and obviously do not bid for small-value contracts (<800 000). Therefore, the above-mentioned argument which justifies their registration in the APP

electronic system due to changes of the PPL on small-value contract, is not valid. These firms are suspected to have engaged in opportunistic behaviour and favouritism from the government. The highest amounts of red flag cases are shown in the following table:

Name of Firm	Value of contracts (ALL) 2013-2015
ikubINFO	1,657,311,693
ETT GROUP AUTO	317,152,247
Adel CO	280,161,061
AFT	228,721,967
VIBTIS	169,081,350
InfraKonsult	168,784,617

As mentioned above, the unified methodology of listing the name and value of contracts for individual firms enables different sections of the study to be compared for indicators they present. In this vein, it is important to note that Adel Co, registered in 2013, is one of top 50 firms (listed number 28) of most powerful firms during PS governance. The value of ikubINFO is also extremely high for a new registered firm. This case poses a high risk for opportunistic behaviour and biased decision making.

The following session presents and discusses other cases of red flags, identified by the research during the analysis of data collected for the above analysis.

4.5 Red flags, warning of fraud

The European Commission, World Bank, ERBD, Transparency International and other international bodies have developed a series of documents which help academics, public officers, politicians and groups of interest to evaluate public procurement procedures and apply anti-fraud measures. Just to mention a few, the ARACHNE is a tool supported by the European Commission in 2013 which tries to prevent fraud activity. The Red Flag Corruption analyses of the World Bank (2010) develop four red flags as an early warning system. The Organisation for Economic Cooperation and Development (OECD), has developed a checklist of integrity and good practice in public procurement (2009, 2008, 2007).

As corruption is difficult to be captured directly, practitioners and academics have agreed that whenever cases, patterns and practices exist to warn any kind of deviance or irregularity, there is a signal that the activity is prone to corruption. Usually red flags are linked to competition issues, and they undermine the concept of integrity in public procurement. It is important to mention that identification or classification of cases as

red flags, does not necessarily mean that the fraud exist, but it is a signal or indicator for extra attention.

Analysis of other indicators is the baseline for the identification of several cases of red flag situations, as follows:

Case 1 – Kastrati sh.p.k

The table in session 5.4 showing the most powerful firms that have been awarded reviewed contracts, put Kastrati sh.a and Kastrati sh.p.k at the top of the list for the period September 2013 – 2015, when the Socialist party was in power. Total value of awarded reviewed contracts during this period is:

Kastrati sh.a	Value of awarded (reviewed) contracts: 3,147,718,892
Kastrati sh.p.k	Value of awarded (reviewed) contracts: 1,139,594,380

Considering that Kastrati sh.a and Kastrati sh.p.k are leading the list of firms for the mentioned period, they are subject to further scrutiny by tracking the consistency of their activity in the PPS.

Considering their long experience in the market and their powerful position during 2013-2015, it is expected that these firms have had a significant participation in previous years (2011-2013) in public procurement. Facts show that both firms that are leading the list of

awarded reviewed contracts for 2013-2015, are not only missing from the top 50 firms of 2011-2013 list, but they are not even part of 246 firms that have been awarded reviewed contracts during 2011-2013. This fact leads to further scrutiny of the overall contracts awarded to Kastrati sh.a and Kastrati sh.p.k (not only reviewed contracts) during 2011-2013. Data from Bulletins of the APP for 2011-2013 show that while Kastrati sh.a has been active during this period and has been granted a considerable number of contracts, Kastrati sh.p.k had not participated in public procurement before September 2013. The strong appearance in public procurement of this firm when the governmental elite changed, listed 2nd out of 1764 firms during 2013-2015, is a red flag that indicated the connection it has with the government in power.

Case 2 – Intech + sh.p.k

Intech + is a firm registered in 2001, focused on IT and electronics. Although it is not a new firm, it has participated only once (unsuccessful bidder) in public procurement procedures before September 2013. After 2013, Intech + became not only very active in public procurement, but it gained an outstanding value of contracts which are comparable to the most powerful firms in public procurement for this period. Value of contracts awarded is listed below.

Value of contracts awarded: (September 2013-2015)
303,600,000
181,800,000
163,920,000
107,527,530
95,690,000
89,606,275
42,840,000
37,638,000
24,531,070
23,716,140
21,534,480
19,993,634
18,927,318
18,180,000
15,291,000
14,067,150
9,609,000
8,937,100
8,909,000
7,899,680
7,080,000
6,339,000
3,440,500
2,299,000
1,406,715
Total Value: 1,234,782,592

Case 3 – KPL sh.p.k

As explained above, the legislative framework in public procurement requires potential winners to show their experience in similar contracts, as a guarantee that they have the capacity to successfully fulfil the contract.

In order to gain such experience, firms usually join consortiums which allows them to take part with a certain role and then use this contract for further applications.

In the case referred below, KPL is a firm with a low cost-efficiency (0.9%) for contracts awarded during 2013-2015. Overall, it has been awarded three contracts, one of which has 0 cost-efficiency. Among three contracts, there are two low-value contracts, respectively 4,838,733 ALL and 1,899,935 ALL each. The third contract is awarded with an amount of 848,421,271 ALL, which is an outstanding value compared to the demonstrated capacity of this firm to successfully implement high value public contracts. Another indication that provide a red flag warning is the competition procedure followed for the contract. The published call ‘Cooking service and delivery for QSUT’ with the amount above, 848,421,271 ALL, received three bidders, two out of which did not submit the form of the financial offer, thus technically the third bidder (KPL) was not competing with other bidders for a financial bid. Awarded as a one bid contract, to a firm with no demonstrated experience, this contract presents a red flag that warns for a kind of irregularity in principles of public procurement.

KPL Contracts for 2013-2015

Threshold	Value of awarded contracts	Cost – efficiency
1,899,935	1,879,790	1.10%
862,128,530	848,421,271	1.60%
4,838,733	4,838,733	0.00%

Case 4 – Jubica sh.p.k

Jubica is a firm that has participated in the public procurement process during both periods. The value of contracts awarded during 2011-2013 is 31,041,500 ALL, showing a relatively small financial capacity of the firm and a low cost-efficiency (3.6%). Although a relatively modest firm, during 2013-2015 Jubica was awarded two high value contracts, one of which is a JV (Jubica &ITE Group) with the amount of 329,650,535. This contract was awarded through single bid procedures, without competition and a low cost-efficiency (1.1%). Another high value contract of 484,339,653 ALL was awarded to Jubica sh.p.k with a one bid contract, questioning the capacities of the firm to successfully implement these contracts.

Value of contracts awarded (September 2013-2015)	Cost-efficiency
763,765	1.10%
2,194,304	3.90%
484,339,653	3.10%

329,650,535 (JV)	1.10%
81,996,592	16.40%
48,499,300	0.00%
Total Value : 947,444,149	4.30%

4.6 The public procurement review system

To fully address the issue of influence from groups of interests to institutional actors, it is important to analyse the institutional system where actors operate. The following analysis provides evidence on how the institutional setting allows corruption to successfully flow within the PPRS. As a baseline, we agree that institutional setting is developed and depends on actions and inactions of institutional actors and their political will to address issues and consolidate the system with effective interventions. When Schattschneider explains power distribution and elite control, he claims that ‘whoever decides what the game is about, decides who can get into the game’ (Schattschneider 1960:105). Having said this, deficiencies of the system in terms of interference from non-state actors, are addressed to actors that are responsible to fix it. Lack of measures for improvement are considered as inactions of the state actors.

The following analysis identifies opportunities that exist within the PPRS for a corrupted agent to be exposed to behaviours where the ‘client’ – the potential corruptor – influences and corrupts the public official.

- *Submission of complaints to PPC*

When aggrieved economic operators compose a request for review, facts and evidence proving the alleged infringements of the competitor are required as a compulsory part of the claim. Often, the necessary evidence to support the claim is not public or it is a classified information. However, aggrieved economic operators manage to find the needed information on their competitors, using informal channels. They are obliged to act informally as the system does not provide a legal and formal way for them to learn about the deficiencies of other competitors. While the submission of evidence for a complaint is compulsory to support their complaint, many times aggrieved vendors use confidential information on the competitor, shared from previous collaboration in joint-ventures. Other times, leaking comes from public officers at the Contracting Authority who collude with firms and breach discretion requirements. Although the PPL stipulate that the CA shall not disclose information received on firms. Such information includes, in particular, technical aspects, trade secrets and confidential information of tenders²²

²² Article 25 ‘Confidentiality’, law no.9643 ‘On Public Procurement’

- *Cost-benefit calculation of rational actors*

When making decisions, individuals behave strategically, selecting options that confer them maximum benefits, deviating from patterns that would make them worse off (Parmenas, 2003), known as ‘the utility maximization concept’. Keeping in mind that these informed actors are able to predict the consequences of their behaviours, much of the literature that discusses how to prevent officials from engaging in corrupt practices, emphasizes methods such as increasing the risk of getting caught, increasing the punishments involved for corruption, and limiting the discretion of officials (Becker, 1968; Klitgaard, 1988; Rose-Ackerman, 1978, 1999). However, interviews conducted with former employees of the PPC show that procurement officials in the PPRS believe that the chances of getting caught or sanctioned are lower than the profit that they make from collusion. Reasons for this are explained as follows:

- (i) The PPC is a Collegial Body which means there is no individual responsibility for the decision. As Søreide claims, ‘it matters if decisions are made by one officer alone or as part of a group [...] those involved will find it “safer” to commit such a crime if they are part of a group of allied decision makers’ (Søreide, 2014:11).
- (ii) No recorded case of any sanctioned official from the PPC to date, thus their expectation of the consequences derived from their actions

supports the idea that chances to be punished are extremely low. On the other hand, ‘an individual will be less likely to exploit opportunities for corruption if the costs associated with the crime increase’ (Søreide, 2014:27).

(iii) Evidence of frequent changes of staff gives reason for agents to believe that it is a job position with a temporary duration. This makes them believe that they should make instant profit for themselves. This scenario is usually linked to perverse incentives.

(iv) The PPC respond to the willingness of the principal to ensure political protection and the permanent position within the PPRS, considering the frequent change of staff (see Appendix 9.4).

(v) The court does not change the decision of the PPC, even when it decides to uphold the decision of the economic operator that has challenged the decision of the PPC in the court. According to Law No. 9643, dated 20.11.2006 ‘On public procurement’, amended by Law No. 182/2014 ²³, article 64/3¹⁶⁶ ‘Appeal to Court’ stipulates that the examination of complaints by the Court shall not make the grounds for suspension of procurement procedures, the signing of the public contracts on goods, services or works by contracting authorities, or the execution of

²³ amended by Law No. 9800, dated 10.09.2007, Law No. 9855, dated 26.12.2007, Law No. 10170, dated 22.10.2009, Law No. 10 309, dated 22.07.2010, Law No. 22/2012, Law No. 131/2012, and Law No. 182/2014 “On Public Procurement”

obligations, according to procurement contracts between the respective parties'. Thus, the procurement legislation in Albania states that the contract signed after the PPC decision is not changed by any other instance, nor by the Court. Lost profit and damage compensation are paid to economic operators harmed by an infringement of the public procurement rules, but this does not interfere with the signed contract after the PPC Decision. In such a way, the PPC has de facto or the final say on awarding the public contract, despite further instances of scrutiny which are at its disposal as part of the PPRS.

This analysis shows that the PPRS as a system is unstructured, easily captured by groups of interests. In unstructured settings, 'principals and agents act as rational actors for their own self-interest' (Smith, Bertozzi, 1998:2) where the system and the financial resources are frequently prone to favouritism and corruption.

4.7 Who is the real agent?

Given that it is difficult to identify the opportunistic behaviour of institutional actors, their role can be revealed by analysing the behaviour of their collaborators: groups of interest. Hence, the chapter above analyses the behaviour of firms active in the PPRS and the characteristics of the system they operate. The set of issues raised indicates the questionable role of state actors, at both technocratic and political level.

As the Principal Agent theory explains, self-interest is not a characteristic found only in agents' behaviour. The literature presents the concept of 'political moral hazard' (Knott and Miller, 2008) which is found in actions undertaken by elected politicians when they act primarily in their party's interest, undermining the public interest. Political elites make selective decisions in favour of and influenced by economic elites. Several scholars have characterized the process as one in which resources are allocated according to favouritism and cronyism, with political principals distributing resources to extend their political control over the emerging private sector (Čučković 2002, Franičević 1999). Since the PPC in Albania represents the least likely case of a non-politicized institution, the dependency is used for political control as well as favouritism for economic and political purposes.

This is in fact a two-folded process: not only do political elites favour economic groups with whom they have selectively engaged interests, but by doing so, they are also selectively excluding the demands of other economic groups, through influence, manipulation tactics, and the bargain of power. For this reason, all political systems need to mediate the relationship between private wealth and public power. Those that fail risk a dysfunctional government captured by wealthy interests (Susan Rose-Ackerman, 2005).

Principals acting as agents is a phenomenon mostly found in unstructured settings. From one side, the role of groups of interest is important to be considered in a preliminary analysis as they have the potential to shape the role of principals. On the other hand, the role of the electorate has to be understood, in terms of its potential to ensure transparency, accountability and good governance from the side of the principal. However, in unstructured settings electorate is weak and the channels of accountability with the government are questionable. This situation influences the rational decision making of the principal and leads his actions and inactions to be like that of an agent.

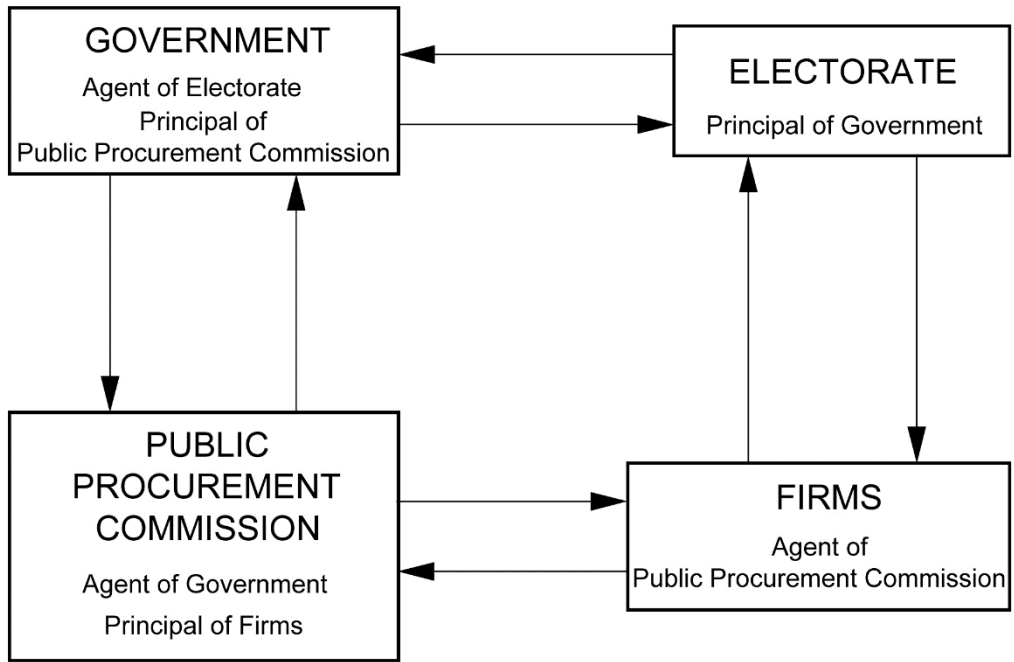
Knowing the real role of actors is of paramount importance. First, identification of the roles of actors allow researchers to use PA theory instruments to analyse the agency problem, decision making and issues such as delegation of power, asymmetry of information, etc. Secondly, it helps policy makers by proposing the appropriate intervention to improve the system. The figures below show the transformation of roles of institutional actors, due to the influence of groups of interest in the PPRS in Albania and different types of corruptive behaviours.

The first figure shows the principal agent relations established as expected by the agency theory. The governments and the tax payers (electorate) establish a principal agent relation since the tax payer supplies the

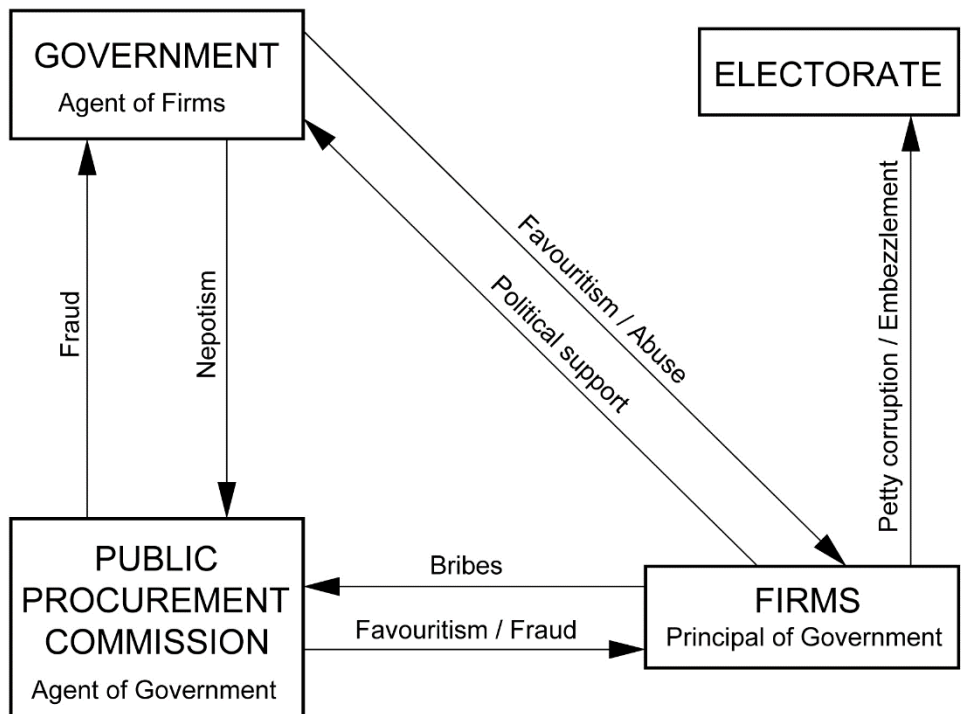
government with public money translated in procurement procedures, published in call for bids. On the other hand, the Government is the principal of firms, supplying them with financial resources in exchange for public goods, services or works. Within this relation, the electorate is entitled to monitor the activity of the government on public fund distribution, while the latter controls the progress of firms in managing public funds. As the government is responsible for the efficient management of public money, it delegates its power to the Public Procurement Commission, to review complaints of aggrieved vendors. The latter behaves as the principal of firms when making final-administrative decision on contracts. The PPC is not a full principal though, as it does not monitor the implementation of the contract. However, when making decisions, the PPC is able to impose fees and penalties on firms, thus behaving as in the role of the principal.

The next figure, Map of corruption flow among actors in the PPRS, shows how relations have changed due to the influence of groups of interests. Together with this, the role of actors is re-shaped. Arrows show in-relations built on corruptive behaviours, based on the role actors play. The electorate is weak, and it hardly participates in the overall decision-making process. On the other hand, the role of firms is empowered, and their influence has weakened the institutional role of state actors.

Principal Agent Relation



Map of Corruption flow among Actors in PPRS



As the principal agent theory explains, when a corrupt official betrays his political superior and public trust, this is essentially, in some circumstances, the end of the story [...] but this analysis can hold only if the political and administrative systems are relatively well-developed and autonomous [...]. In transition countries, this is rarely the case (Usaid, 2005:9). The analysis shows that, in similar contexts to the PPRS in Albania, the agency problem does not lay with the agent only, but to the political superior as well, who is taking the role of the agent.

4.8 Concluding remarks

The environment outside the agent-principal diad shows a fragile PPRS where integrity and efficiency in managing public finances is questionable. Based on the result of the analyses, the PPRS falls short in terms of effectiveness, competition and impartiality. The chapter analyses where the PPRS faces non-compliance with public procurement principles, variances in balance of power when the government elite changes, red flags and a tendency towards PPS corruption.

The analysis concludes that due to the influence of groups of interest, the political ordinate (the Prime Minister), despite its institutional capacity of being the gate keeper for the RRPS, acts as agent. Following this logic, the PPC has the role of the sub-agent.

After having identified the real role of institutional actors, the plethora of decision making within institutions cannot be explained by the capture of state theory. As Levine and Forrence state ‘capture theory does not explicitly consider the relationships among actors in the governmental process nor the mechanisms by which the acts of regulators are made to conform to the desires of organized subgroups’ (Levine and Forrence, 2015:170). Thus, the study uses the explanatory power of the principal agent theory to analyse decision making within institutional settings, having as a baseline, the institutional actors’ real role beyond their institutional capacities.

Chapter V. Analyzing the Agency problem in the Public Procurement Review System in Albania

Agency is an analytical approach concerned with information and control issues. The principal agent model puts the agent in an advantage position as far as information is concerned. It claims that the bureaucrat has more information and expertise than the principal, thus they have both the opportunity and the incentive to manipulate the principal (see Niskanen 1971; Miller and Moe 1983). Based on agents' behaviour and outputs, the principal designs the monitoring strategy and control mechanisms as well as incentive schemes when necessary.

A principal responding to a shifting agent is the baseline of PA theory. Furthermore, as Huber would argue, 'the comparative advantage of principal-agent model is that it predicts systematic variation between problems in the political environment and the institution for delegation to bureaucrats' (Huber 2000). Being a political actor him or herself, the principal reflects issues of corrupted political environment in decision making. In the Albanian context, the fragile political environment, which is prone to corruption, is mirrored by the decision making within the PPRS. This argument and other issues such as monitoring, accountability and independence of the agency *confirm* the role of the political ordinate as an agent. The principal-agent model leaves space not only for the

bureaucrat to shift, but also for the elected officials to pursue their self-interest in a way that can harm the public welfare (Knott and Miller, 2005).

Public accountability keeps the principal away from political environment and reduces phenomena of ‘bureaucratic drift’ and ‘bureaucrat’s dilemma’. When there is a lack of public accountability, the principal might undermine the credibility of the institution by letting political influence control and guide his preferences. In such situations, ‘it is not difficult to imagine a scenario where the optimal trade-off between credibility and control is perceived to be a combination of high formal independence and high informal control through political appointments’ (Ennser-Jedenastik, 2015:6)

In this case, actions such as dismissal and appointments of co-partisans’ personnel might take place. Appointing government loyalists so as to reward them for their political support undermines not only agency efficiency but also the agency’s autonomy. ‘The political control over the bureaucratic institutions is even greater when some loyal and reliable persons are appointed by the politicians to the top management positions, guaranteeing in this way the internal control of the administrative activities reached through direct “manipulation” (Haruta, Radu. B, Radu.L, 2009:83).

5.1 Application of PA theory in Public Procurement Review System

It is already agreed that ‘principal-agent relationships shift and mutate in a dynamic government system — such as a procurement system,— thus it is vitally important to understand the stakeholders and institutions, their roles, and their social and political contexts.’ (Yuking, 2010:76). After carefully analysing the role of actors in the PPRS, it is identified that although the PM by his institutional role is the principal, his actions and inactions show that he acts as an agent. The Public Procurement Commission’s (CPP) institutional role is the sub-ordinate or the agent, even though it has the role of a sub-agent.

The following sessions explain the role of the Prime Minister and the PPC as agent and sub-agent. Firstly, the lack of monitoring mechanisms to control the activity of the PPC explains the role of the PM as an agent. Many times, politicians are not motivated by productive efficiency or the public interest and they are not even seeking an optimally balanced set of hierarchical controls and monitoring mechanisms (Moe 1984: 761-2). The principal can rationally decide not to monitor their agents' behaviour. Theoretical approach as well as empirical studies show that ‘in low-income countries there is a lack of political will on the part of the principals to create and implement strategies that will induce better performance of agents’ (Žarković-rakić, 2007:240). Lack of political will

to monitor the agent is a strong instrument that justifies the absence of the principal's involvement to solve the bureaucratic incompliance.

Secondly, variances and inconsistency in decisions of the PPC indicate biased decisions and corruptive intention in public procurement decisions made by the PPC. The misuse of public power for private gain is explored in the Procurement Review System in Albania from both the principal acting as an agent and the sub-agent.

The specific objectives of this Chapter are:

- (i) Conduct a review of Albania's PPRS institutional setting and examine its control and auditing mechanisms for the deterrence of inappropriate behaviour.
- (ii) Identify manipulative decision making of the PPC by reviewing cases of stable patterns of flawed, inconsistent interpretation as a proxy of corruptive practices.

5.2 Review of monitoring and control mechanisms in the PPRS in Albania

According to 'Klitgaard formula', $\text{Corruption} = \text{Monopoly} + \text{Discretion} - \text{Accountability}$ (Klitgaard, 2000), thus corruption is more probable when the monopoly of information is high and the accountability within the organization is low. Keeping this in mind, international organizations such

as the World Bank call for systematic monitoring and public reporting on different agencies that would strengthen accountability and incentives for improvement (World Bank, 2011). From its establishment, the EU Commission Progress Report for Albania identified the lack of monitoring and control mechanisms for the PPRS in Albania (EU Report, 2011). Several years after, the issue has still not been addressed.

This section will provide a review of existing monitoring and control mechanisms in the PPRS in Albania and reasons to explain the situation. For doing this, instruments of PA theory of ex-ante and ex-post control mechanisms are used.

5.2.1 Ex ante control mechanism in PPRS

Legislative specificity as a control mechanism refers to ‘writing into the law precisely and in a detailed way what the agency is to achieve, and how to do so’ (McCubbins, Noll, Weingast, 1989:440). Scholars argue that ‘control over regulatory agencies is exercised when policies are specified in detail in legislation’ (Huber and Shipan, 2001). In the Albanian case, the public procurement law is short, compared for instance to the Croatian law on public procurement, which is three times longer and much more specific. Based on the theoretical standards, since short laws are more flexible and subject to interpretation, Albania faces the lack of legislative specificity, which allows room for subjectivity. Despite the numerous

legislative initiatives (Laws, amendments, DCM, regulations) and institutional restructurings, the PPS in Albania remains still a highly problematic sector where interpretation of law is flawed.

Design the agency. Designing the agency structure and granting the opportunity of redesigning it leaves also space for political control from the principal. The initial jurisdictional design of an agency determines which interest groups will have ready access to the agency and on what terms (Jonathan Macey, 1992). From its establishment, the PPC was selected directly by the Prime Minister (Law no.9643) who acted as a sole principal to appoint and dismiss PPC commissioners. Moreover, none of the PPC staff undergoes any selection process for the position (an exam or interview) similarly to the procedure of civil servants. Although the law no.9614 article 19/7 stipulates that nobody should influence the decision-making of the Commission's members, the lack of independence from the government of the PPC and a lack of clarity in its institutional responsibilities are identified by the EU Commission Progress Report for Albania (EU Progress Report, 2012, 2013, 2015). The agency autonomy is almost impossible under conditions where political control from the political ordinate dominate the system.

*Appointments*²⁴ as a control mechanism take part when the principal appoints the head of the public institution or other members of the board/commission. The literature refers to this phenomenon as *politicization*. Rouban (2003) states that politicization is mostly understood as the appointment, retention, promotion, or dismissal (if possible) of bureaucrats based on political criteria rather than the merit' and as such, is it manifested with the promotion of co-partisans to public sector positions by government politicians (or, by the same logic, the removal of people with ties to the "wrong" party) (Ennsner-Jedenastik, 2015). Despite the fact that political control hinders the agency autonomy, one of the main problems associated with politicization is the lack of professional expertise in public administration (Eisner 1991; Khademian 1992; Mosher 1968). The continuous staff turnover in the PPC is addressed as a concern in the 2015-2016 Progress Report of the EU Commission for Albania. Having said this, the PPC in Albania represents the least likely case of a non-politicized institution. This dependency is used for political control as well as favouritism for economic and political purposes. Semi-formal interviews show that actions such as dismissal and appointments of co-partisan personnel in the PPC have become standard

²⁴ Weingast and Moran 1983; Weingast 1984; Calvert, McCubbins and Weingast 1989; Spulber and Besanko 1992; Huber 2000; Huber and Shipan 2001

over the years. The Public Procurement Commission was changed 5 times in 6 years while according to the law, commissioners hold a 5-year mandate, with the right to be appointed for another mandate²⁵.

5.2.2 Ex post control mechanism in PPRS

Oversight is one of the most important ex post control mechanism. When referring to the actor who exercises the power to oversee, there is, as actor David Epstein explains, congressional oversight and juridical oversight implemented through existing administrative law investigations into the performance of an agency (Epstein, 1999). The oversight by the principal himself is another possible channel of control. In the case of the PPC, oversight is missing from all instances. This is explained as follows:

Lack of controlling mechanisms from the side of the Principal

According to Decision no.184, dated 17.3.2010, art. 6, the PPC submit the annual report on its activity to the Prime Minister. Moreover, article 14/2 stipulates that the PPC reports to the PM every time the latter requests him to do so. This report is a general description of the work of the PPC. It does not provide any kind of information that might be used to capture corruption or any other shifting activity from the side of the PPC. It is

²⁵ The civil society organization ResPublica has asked the Council of Ministers (CM) for transparency on a Decision taken in this regard, and has also won a case in the court which obliges the CM to provide information requested on particular PPC decisions (based on the Law on the Right to Information, no. 119/2014), but the CM has not provided the required information for this request.

rather a formal narrative report on everyday tasks of the PPC. De facto, the principal does not monitor or control the activity of the PPC.

Weak role of the Administrative Court in the review process

After the PPC issues a decision, economic operators have the right to challenge the decision in the third review instance by the Administrative Court. In cases when the court decides to uphold the claim of the economic operator and nullify the decision of the PPC, the court does not interfere with the contract awarded by the PPC, but it only provides the right for the economic operators whose claim is upheld to receive damages and compensation. At the end, the winner of the contract remains the one that the PPC has approved. Since the court does not cancel the contract awarded by PPC, it does not encourage economic operators to challenge PPC decisions to the court, thus the number of submitted legal claims is relatively low.

The damages and compensation compose economic damage for the state, for which no one is responsible, and no one is effectively prosecuted.

At this stage, it is very important to ask what puts the State Attorney's Office in motion, how active is the General Prosecutor toward cases of procurement fraud. In theory, any action in breach of the law would lead to the contract being void and criminal charges being filed with the State Attorney's Office (Podumljak, M., & David-Barrett, E., 2015:26), while

in practice the number of investigations is very low and the number of verdicts for the PPC is lower. Coordination and the responsibility of the court to report cases for further scrutiny to the State Attorney's Office is unclear, leading to fragmented investigations where the role of the juridical system as the gatekeeper of law violation is undermined. The Prosecutor's Office is almost inactive in considering and addressing PP corruption cases, despite the financial value they represent.

Regulatory peer review is a mechanism of control used toward public institutions to detect shirking. Including technical analyses, peer review aims to analyse and detect biased and selective decisions. It tries to uncover cases when a decision has an outcome that benefits a favoured party, such as a client, an interest group, etc. (Shapiro and Guston, 2006).

Lack of auditing mechanisms toward the PPC Decision Making

The contents of PPC decisions are not audited or controlled. The Supreme State Audit (SST) does not audit the content of the work of the PPC as it does with procurement units (Contracting Authorities) in public institutions. If the work of the PPC remains un-scrutinized, the tendency to deviate from the public good is high, considering that public finance is a policy field prone to corruption.

This analysis shows that control mechanisms are not in place nor optimal to satisfy the principal's observance which ensure the agent to be accountable to the principal. Although the model of the Public Procurement Review System in Albania is approximated to the European legal framework, the institutional setting reflects the lack of *monitoring mechanisms*, providing an open space for systematic favouritism, corruption and collusion to arise, and puts into question the overall integrity of the system.

As elaborated above, the Principal Agent theory considers that in the Public Procurement Review System there exists:

- A Prime Minister (agent instead of principal) whose objective is the maximization of profit, rather than the pursuit of the public interest. Thus, he does not show intention to monitor the PPC, but to politically control and orient PPC decision making toward private interests;
- The PPC (a shifting agent acting as sub-agent to the PM);

As PA theory explains and the empirical data show, the lack of control mechanisms leave space for procurement officials as rational actors to follow their interest when making decisions. Ohad Soudry describes the principal-agent problem in public procurement as a situation in which 'the absence of effective control mechanisms, [allows] procurement officials

[...] to involve some personal preferences, derived from their private interests, career prospects, social contacts, monetary reward or merely an aversion to effort, when making procurement decisions' (Ohad Soudry, 2010). The following section will analyse the decision making of the PPC regarding the quality of review decisions, consistency and impartiality.

5.3 Compliance and consistency in PPC decision making

One of the most important anti-corruption and compliance mechanisms in the public procurement field is the Public Procurement Review System (PPRS), whose role is to enable economic operators to challenge public procurement decisions. According to the law, the PPRS promotes competition and non-discriminatory treatment of economic operators, upholding the rule of law within the public procurement system, and protecting actors from unfair and corrupt practices. The Public Procurement Commission (PPC) is the highest decision-making body in the PPRS. This institution is purposefully built to be insulated from the rest of the administration to safeguard it from undue interferences. The review system is responsible for establishing a foundation for a *uniform application* of the law and thereby serving as guidance for tenderers, increasing predictability and thus upholding the rule of law (Lina Carlsson & Karsten Åström, 2008).

The evaluation of procurement bids is not based only on prices, but also on flexible and non-standard parameters that imply quality or related issues such as environment protection or encouragement of new technologies. This poses a risk for interpretation and selective evaluation from PPC staff. A procurement officer in charge of assessing proposals can manipulate the evaluation to “steer” the contract to a bribing company.

The capture theory explains that the economic operators can offer bribes to the agent who is evaluating the bids, and influence as such their decision to respond to their demands. Surely there is an interval within which the agent can be ‘flexible’ in evaluating the contract and misrepresent the inputs to produce desired outputs. This varies from the type of the contract as well as the structural mechanism of control and accountability in place. Typical distortions in the decision-making of the Procurement Commission (tailor-made interpretations) are difficult to uncover by simply assessing the conformity of procurement records towards legal provisions, as *prima facie*, they seem legally-sound and well-reasoned. Thus, only by comparison of decisions issued on similar tendering procedures, one can find variances in the interpretation of tendering criteria, rules and procedures, and in this way potential corruptive practices can be uncovered. Given this, this study considers evidence of

irregularities in PPC decisions that occurred routinely in the complaint review, but legitimately within the procurement rules.

The study brings together in categories examples that show the inconsistency or variations and flawed interpretation for similar procurement complaints, pointing out the lack of compliance and consistency in the decisions issued by the PPC. Inconsistency in decisions of the PPC (different decisions for same criteria) is a proxy that indicates biased decisions and corruptive intention, unfair or unequal treatment, failure to follow particular requirements of law or other legal norms/procedures, etc. (PACA, 2010).

The analysis on the inconsistency of PPC decisions is conducted following a survey to economic operators who were asked to indicate cases of inconsistency they are aware of. These cases were further analysed by the researcher. Security guards' contracts are chosen because they have the highest number of bids (almost 95% of total PPC decisions on tender procedures are on security guards) and it comprises both low and high value contracts. Moreover, the net profit assigned by economic operators in biddings is very small (0.000007 euro the average) so that this does not motivate economic operators to appeal the PPC decision in courts (as mentioned above, when the court upholds the decision of the appealing economic operator, it provides the lost profit only, the value of which is

sometimes 0.5 euro). This strengthens the role of the PPC to have the final say on the award contracts. Other categories of contracts except security guards have been selected via random sample and have been analysed in parallel to one another to match inconsistent cases.

Moreover, semi-formal interviews with former employees of the PPC are conducted in order to understand the internal functioning of the institution and its decision making, their level of expertise, etc. Other interviews were conducted with EU experts (SIGMA, Transparency international, EU Delegation in Albania, etc.) outside Albania.

Law no. 47/2017, article 19/3 stipulates the principles upon which decision making of the PPC is made, such as impartiality in reviewing contracts, consistency, legitimate, timely and cost-effective contracts, and openness. These principles compose the categories under which identified cases of skewed interpretation of law and biased decision making are done. This section will describe three cases of breach of the above principles in a short and simple way. A technical explanation, analysed in a long version of 12 cases (*2), followed by a professional interpretation of laws is found in the Appendix 9.1 of this study.

5.3.1 Cases of inconsistency in Decisions of PPC

For the purposes of this research thesis, there are 24 cases of decisions studied which were issued by the PPC during the period 2015-2017. In parallel, these cases are controversial and show that decisions of the PPC are inconsistent and do not comply with the principles under which the PPC works. The table comprises all cases listed under principles they breach. However, it might happen that same cases are in conflict with more than one principle (a detailed analysis of each case found in Appendix 9.1).

Impartiality in Decision making	Consistency in Decision Making	Legitimacy in Decision making	Timing and cost-efficiency
K.P.P. 185/2015 K.P.P. 699/2016	K.P.P. 296/2016 K.P.P. 363/2016	K.P.P. 239/2016 K.P.P. 455/2016	K.P.P. 615/2017 K.P.P. 649/2017
K.P.P. 143/2017 K.P.P. 152/2017	K.P.P. 335/2016 K.P.P. 687/2016	K.P.P. 54/2017 K.P.P. 152/2017	
K.P.P. 302/2017 K.P.P. 699/2017	K.P.P. 41/2016 K.P.P. 683/2017		
	K.P.P. 363/2015 K.P.P. 2/2016		
	K.P.P. 25/2017 K.P.P. 35/2017		
	K.P.P. 557/2015 K.P.P. 340/2016		

Short descriptions of three cases of inconsistency in PPC Decisions are provided as follows, to understand the typology of inconsistency.

Case no.1 - Inconsistency in reviewing claims on tendering criteria

Decision **K.P.P 25/2017** dated 26.01.2017 and Decision **K.P.P 35/2017** dated 31.01.2017 represent clear cases of inconsistency. The *tendering criteria* we are reviewing is ‘... *employment period for a technical engineer ...*’. The economic operator submitting a complaint to the Public Procurement Commission is the same in both cases and both complaints are submitted *within one month*. After having exhausted the first review instance, the economic operator has submitted a claim in both cases to the PPC. Reviewing decisions of both contracting authorities for the same criteria and the same economic operator who has submitted the same documents in both cases, PPC provides two different decisions. For decision K.P.P 25/2017 the PPC decided not to accept the claim of the economic operator, while for decision K.P.P 35/2017 the PPC decided to uphold the claim of the economic operator and reject the decision of the Contracting Authority. In other words, the PPC has scrutinized (within one month) two claims submitted from the same economic operator appealing the same tendering criteria, based on the same documentation, and has provided different interpretations for each decision, leading as such to contradicting outputs.

Case No.2 - Inconsistency in reviewing claims on formal criteria
(submission deadline)

Decision **K.P.P 239/2016** dated 19.04.2016 and Decision **K.P.P 455/2016** dated 21.06.2016 represent further cases of inconsistency. This case represents a review of inconsistency in the formal criteria of the claims submitted by economic operators. The interpretation of these two

decisions relates to the deadline²⁶ for submitting claims to review instances. In this case, the economic operator is not the same. In both cases, the evaluation of the Contracting Authority is published on 21.03.2016. The law on Public Procurement²⁷ stipulates that 'Claims against the decision of the contracting authorities are to be submitted to the latter within seven days starting from the subsequent day'. In both cases scrutinized here, economic operators have submitted the claim to the Contracting Authority on 29.03.2016. Although these cases represent an identical situation in terms of deadlines to submission of claims, the PPC decision is different for each case. For decision K.P.P 239/2016 the PPC decided not to consider for review the claim of the economic operator reasoning that it had not fulfilled the formal criteria (not having respected the claim deadlines), while for decision K.P.P 455/2016 the PPC decided to review the claim and to proceed with a decision. Thus, the PPC has scrutinized two claims having the same submission date to the Contracting Authorities, challenging decisions made by the Contracting Authorities published at the same date. The PPC decided differently for each of the claims in terms of approving only one of them for review and calling the other nullified due to formal criteria violation, leading as such to contradicting outputs.

Case no.2 - Inconsistency in reviewing claims on tendering criteria

Decision K.P.P 557/2015 dated 25.08.2015 and Decision K.P.P 340/2016 dated 17.05.2016 also represent cases of inconsistency. The tendering

²⁶ Decision of Council of Minister no.184, article 23 pint 3/a dated 17.03.2010 “*On the approval of regulation ‘On the organization and functioning of Public Procurement Commission’*”

²⁷ Law no.9643 dated 20.11.2006 “For the Public Procurement amended”, point 63, point 1 and 2

criteria we are reviewing in this case, as set in the tendering documents by the contracting authority, is ‘... employment contracts and CVs of engineers...’ (supporting documents). The economic operator submitting a complaint to the Public Procurement Commission in both cases is “Nika” sh.p.k. As the first review instance, Contracting Authorities (different in each case) have both rejected the economic operator’s claim reasoning that the economic operator has not fulfilled the criteria set for the employment contracts and CVs of engineers, meaning that they have not submitted the supporting documents (such as the CV and work Contract) for engineers who have already left the company at the time of application and are substituted by other engineers.

Following the rejection of the Contracting Authority, the economic operator has submitted a claim in both cases to the PPC. Reviewing the decision taken from both contracting authorities for the same criteria applied in two different cases, having the same economic operator submitting the same documents in both cases, PPC again decides differently for each case. For decision K.P.P. 557/2015, the PPC decides not to accept the claim of the economic operator, while for decision K.P.P 340/2016, the PPC decided to uphold the claim of the economic operator and reject the decision of the Contracting Authority.

In other words, the PPC has scrutinized two claims submitted from the same economic operator, appealing the same tendering criteria, and has provided different interpretation for both decisions, leading as such to contradicting outputs.

A detailed analysis, provided in the original language of Decisions, is found in Appendix 1.1.

5.4 Concluding remarks

The chapter analysis the agency problem in Public Procurement Review System in Albania. It first conducts a review of Albania's PPRS institutional setting and examines ex ante and ex post control and auditing mechanisms within PPRS. It argues that the lack of political will of the Principal to monitor the agent is a strong instrument that justifies the absence of the principal's involvement to solve the bureaucratic incompliance.

Secondly the chapter identifies manipulative decision making of the PPC by reviewing cases of stable patterns of flawed, inconsistent interpretation as a proxy of corruptive practices. Twelve cases of variances and inconsistency in decisions of the PPC are identified to indicate biased decisions in public procurement decisions made by the PPC.

Overall, based on theoretical consideration and practical cases, the chapter analysis the misuse of public power for private gain in the Procurement Review System in Albania for both the principal acting as an agent and the sub-agent.

Chapter VI. Conclusions

This chapter resumes main findings of the study and provides recommendations in the form of theoretical and empirical considerations.

6.1 Theoretical considerations and suggestion for future research

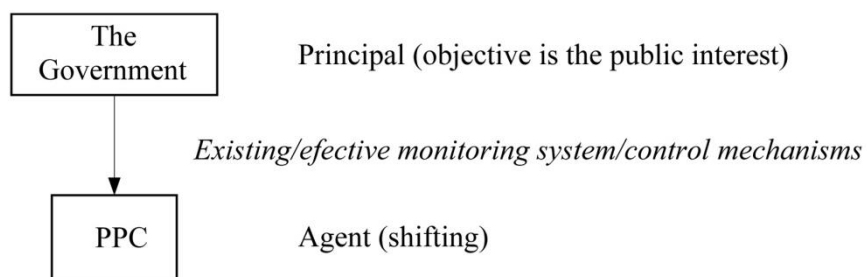
Interests and roles of elites in unsettled settings are changeable and often unpredictable thus their institutional capacity does not necessarily comply with their real actions and inactions. Since the principal-agent theory accounts for modern democracies, the direct usage of this theory in unsettled context would produce inappropriate findings and would drive recommendations outside the appropriate path of intervention. In this context, PA theory needs to be preceded by the capture of state theory, which is developed to explain the role of actors in unstructured settings. Many anti-corruption efforts fail because they misdiagnose corruption as a formal principal agent problem and miss the elite-driven character of state capture (Persson, Rothstein, and Teorell 2013).

After having identified the real role of actors, despite the institutional capacity they represent, the PA theory is able to explain the agency problem. Thus, for unstructured institutions a two-step analysis is required; the first is related to the identification of the real role of institutional actors and the second is the explanation of the agency

problem that arises between them. This approach delineates the scope of each theory, by enabling them to explain the context for which they are developed. This enriches the scope of PA theory which, by using this approach, would be able to engage itself in other unstructured settings in emerging democracies.

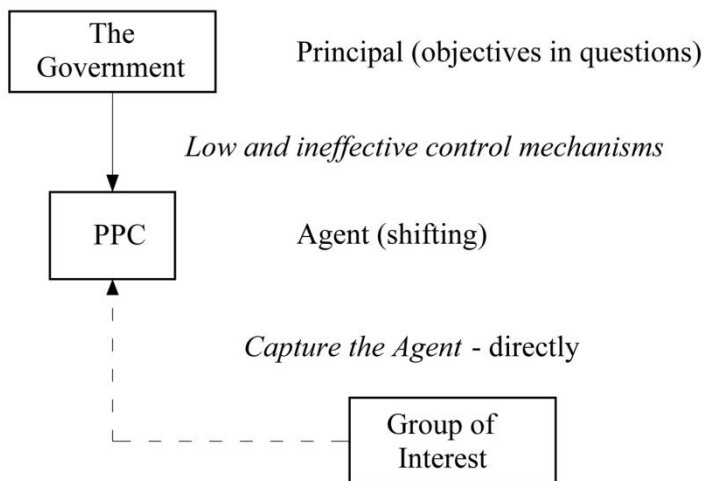
Another consideration is that theories used are complementary and fits with the aims of the study while validating each other's findings. As expected from the capture of state analysis, the Prime Minister would act as an agent instead of a principal while the PPC is a shifting agent acting as sub-agent to the PM. The assumption was that if findings are valid and correct, the PA Theory would expect to find a self-interest principal, without a monitoring strategy. Theoretically speaking, the work of any public institution should be subject to accountability as a check and balance system. According to the PA theory, the principal would normally maximize his effort to monitor and control the agent.

Theoretical expectations



In the empirical case analysed, not the principal nor any another institution is responsible for monitoring PPC decision-compliance with provision of law. Tools inherited from the PA theory explain that control and monitoring mechanism are not in place nor optimal to allow the agent to be accountable to the principal. In this vein, the content of the work of the PPC remains un-scrutinized, thus the tendency to deviate from the public good is high, considering also the specific nature of working with public finance, which is a policy area prone to corruption.

Research Results



Findings from the PA analysis fall under the logic of a principal acting as an agent, and an agent being a sub-agent. This also confirms findings discussed by the capture of state theory of actors having shifted role from

their institutional capacity. The validity of theories is tested since their findings comply with and confirm each other

6.2 Empirical considerations and recommendations

Overall, the existing structure of the PPRS provides opportunities for decision makers to engage in corruptive practices due to the lack of auditing mechanisms; the weak institutional role of other bodies that have a potential impact upon the work of the Public Procurement Commission (PPC); and the rational behaviour of PPC staff who believe that the risk to get caught or sanctioned is lower than the profit they make from the collusion with interest groups.

Shortcomings of the Public Procurement Review System are found in the institutional setting and decision making of the PPC. From a long-term perspective, systematic favouritism will drive out of the market companies unable to win contracts, because they lacked connections (Munir Podumljak and Elizabeth David-Barrett, 2015). The perception of corruption in the sector of public procurement will make companies recalcitrant of getting involved in public procurements because they see the collusion as a zero-sum game: if they do not provide bribes to the officials, the competitor will offer bribes and win. Moreover, if companies expect a contract to be allocated based on biased decision making, they

will artificially inflate the price of the bid to compensate the cost of the corruptive act further damaging state finances.

The problematic situation in the management of public contracts in Albania poses a direct negative impact in excluding firms from accessing public contracts, challenges the integrity of the PPC and PPRS, and damages the economic welfare of the country, the level of democracy and the concentration of economic power in the society.

To address the above-mentioned shortcomings and implications, the following policy recommendations are proposed:

6.2.1 Changes in the legal framework – increasing legislative specificity

Albania represents one of the most corrupt countries in Europe and the area of public procurement is particularly prone to corruption. The idea of approximating the Albanian legislative framework to EU public procurement law is less urgent than the need to understand the Albanian context, the role of prevalent principals and agents, the rules of the game of economic operators in the country, and the collusion that arises as result of the lack of a relevant regulatory policy in the public procurement field. The Public Procurement Review System in Albania needs a more detailed and formalized legal framework, which specifically regulates institutional competencies and actors within the system, relations with third parties and

the business sector, as well responsibilities in case of malpractices and violation of laws, where sanctions apply.

Thus, revised rules and procedures of the PPRS should also address the issue of access to information for economic operators, in cases they lodge a complaint against competitors. The current situation leaves space for collusion between the contracting authorities and economic operators and encourages the leaking of information and informality within the system.

6.2.2 Decrease the opportunities for dependency and political control

Although there has been a recent amendment of public procurement law (no.47/2017) to change the dependence of the PPC to a dual principal, where both the Prime Minister and the Parliament act to appoint and dismiss, most of the time, the PM and the majority in Parliament are from the same political party which makes those two principals act as one. Under these circumstances, although the law amendments of 2017 seem like they have re-positioned the PPC and ensured its independence, in real terms this body is still de jure dependant on the majority rule. As shown, the recent legislative change has not significantly altered the current situation/has not addressed these problems adequately. To avoid politicization and have a qualified and non-partisan PPC staff, the Agency should be independent from political actors, especially when actors represent the rule of majority only. PPC staff need to be selected by the

Department of Public Administration following standard procedures of fair competition and afterwards must be provided the status of Civil Servant.

6.2.3 Introduce un-biased auditing mechanisms

Currently, the Public Procurement Commission is one of the public institutions whose work and output is not audited. A third party, outside of the principal-agent (Office of Prime Minister/Parliament-PPC), should monitor the work of the PPC. The State Audit Control should get involved in the auditing process and routinely conduct an audit of PPC decisions in order to ensure the integrity of the institution and system itself. If the PPC becomes an independent agency, the State Audit Control would find it easier to introduce auditing mechanisms, as there would be no political influence toward the State Audit Control and the system as a whole.

6.2.4 Increase the role of the judiciary within the PPRS

The Administrative Court should not only hold the simple role of the third instance within the Review System, but should uphold its role in unifying decisions regarding Public Procurement. In doing so, it would provide a reference system for further PPC decision-making. For major contracts, there should be a standstill period not only for PPC decisions, but also for Court decisions, meaning that the contract is not signed until the deadline to challenge the PPC decision in court has expired. This will avoid the

need of cancelling unfair contracts and will give courts the right to have the final say on major contracts.

On the other hand, the Prosecutor's Office should have a more active role in considering cases of malpractice and violation of laws uncovered in court proceedings or published by third parties. Penalties on individual members will not only guarantee the punishment of malpractices, but they will also serve as a deterrent for other potential infringements.

Appendix

1.1 PPC Decisions - Cases of Inconsistency ²⁸

Case I

Në vendimin **K.P.P. 296/2016**, datë 05.05.2016, Komisioni i Prokurimit Publik ka marrë në shqyrtim ankesën e Operatorit Ekonomik “Ed Konstruksion” sh.p.k., i cili kërkon skualifikimin e shoqërive “Ndregjoni” sh.p.k. dhe “Hastoçi” sh.p.k. nga procedura e prokurimit “*Procedurë e Hapur*”, me nr. *REF-22539-01-29-2016*, Loti 1, me objekt “*Riparim – mirëmbajtje ndërtimore e objekteve ekzistuese, për vitin 2016*”, me fond limit 20.134.046,9 lekë (pa TVSH), zhvilluar në datën 23.02.2016, nga autoriteti kontraktor, Qendra Spitalore Universitare “Nënë Tereza, Tiranë”.

KPP në përfundim të shqyrtimit në themel të ankesës, ka gjykuar të drejta pretendimet e ngritura nga O.E. ankimues “Ed Konstruksion” sh.p.k. dhe ka vendosur të pranojë ankesën e tij, duke urdhëruar autoritetin kontraktor, Qendra Spitalore Universitare “Nënë Tereza, Tiranë, të skualifikojë nga kjo procedurë prokurimi shoqëritë “Ndregjoni” sh.p.k. dhe “Hastoçi” sh.p.k., duke lënë në garë të vetmen firmë të kualifikuar, konkretisht “Ed Konstruksion” sh.p.k.

Me vendimin e shumicës nuk është dakort njëri prej anëtarëve të KPP (anëtarja Juliana Hoxha). Sipas saj, Komisioni i Prokurimit Publik si organi më i lartë në fushën e prokurimeve publike (*shih nenin 19/1 të ligjit nr. 9643 datë 20.11.2006 “Për Prokurimin Publik, i ndryshuar*), është garant i kontrollit të ligjshmërisë si nga ana institucioneve dhe enteve publike/private që realizojnë procedurat e prokurimit publik dhe i nënshtrohen rregullave të prokurimit publik, ashtu edhe të operatorëve ekonomik (shoqërive tregëtare) pjesëmarrës në një procedurë prokurimi, duke mbajtur në konsideratë nenin 64 pika 3 e ligjit të sipërcituar, në të cilin shprehen kompetencat e KPP, [...]

²⁸ This session is worked in the original language, as the decisions of PPC are published in Albanian.

Referuar sa më sipër, rezulton se nga ana e autoritetit kontraktor në këtë procedurë prokurimi janë kualifikuar vetëm tre operatorë ekonomikë dhe janë skualifikuar të gjithë operatorët e tjerë ekonomikë pjesëmarrës. Konkretisht janë kualifikuar operatorët ekonomikë “Ndregjoni” sh.p.k., “Hastoçi” sh.p.k. dhe “Ed Konstruksion” sh.p.k.

Sipas gjykimit të anëtares J. Hoxha, në kushtet kur pas shqyrtimit të ankesës në KPP mbetet i kualifikuar vetëm operatori ekonomik ankimues (Ed Konstruksion sh.p.k.), duke marrë në konsideratë kompetencat e Komisionit të Prokurimit Publik para lidhjes së kontratës, në zbatim të nenit 53 të ligjit nr. 9643, datë 20.11.2006 “*Për prokurimin publik*”, i ndryshuar, si edhe në respekt të parimit të barazisë, transparencës dhe mos diskriminimit, si tre ndër parimet kryesore të zhvillimit të procedurave të prokurimit publik e njëherazi referuar edhe pretendimeve të operatorit ekonomik ankimues “Ed Konstruksion” sh.p.k. duhet të shqyrtohet **edhe** dokumentacioni i operatorit ekonomik “Ed Konstruksion” sh.p.k.

Shumica, këtë gjykim të anëtares Juliana Hoxha KPP, nuk e ka marrë në konsideratë dhe ka vendosur me shumicë votash shqyrtimin vetëm të pretendimeve të operatorit ekonomik ankimues (shqyrtimin vetëm të objektit të ankesës).

Në vendimin **K.P.P. 363/2016**, datë 20.05.2016, Komisioni i Prokurimit Publik ka marrë në shqyrtim ankesën e Operatorit Ekonomik “Nelsa” sh.p.k., i cili kërkon skualifikimin e shoqërisë “Agro Al International” sh.p.k. nga procedura e prokurimit “*Procedurë e Hapur*”, me nr. *REF-21905-01-19-2016*, me objekt “*Blerje bulmet dhe vezë*”, me fond limit 65.263.883 lekë (pa TVSH), zhvilluar në datën 22.02.2016, nga autoriteti kontraktor, Drejtoria e Përgjithshme e Burgjeve.

KPP në përfundim të shqyrtimit në themel të ankesës, ka gjykuar të drejta pretendimet e ngritura nga O.E. ankimues “Nelsa” sh.p.k., duke e pranuar ankesën e tij. Gjithashtu KPP, duke marrë në konsideratë parimin e transparencës dhe të barazisë në trajtimin e kërkesave, të drejtave dhe detyrimeve nga ana operatorëve ekonomikë pjesëmarrës si edhe rëndësinë e kontratës objekt prokurimi, e cila lidhet drejtpërdrejtë me interesin publik, gjykon të shqyrtojë në themel dokumentacionin e dorëzuar në Sistemin e Prokurimeve Elektronike nga ana e operatorit ekonomik “Nelsa” sh.p.k. në plotësim të kritereve të veçanta të kualifikimit.

KONKLUZION

Referuar 2 vendimeve të sipërcituar, KPP ka rezultuar në dy vendimmarrje të ndryshme për të njëjtën themel çështjeje.

Në rastin e parë, KPP e ka pranuar ankesën e operatorit ekonomik ankimues “Ed Konstruksion” sh.p.k., por me vendim shumice nuk ka pranuar argumentimin e anëtares J. Hoxha, duke i qëndruar strikt objektit të ankesës.

Në rastin e dytë, operatori ekonomik ankimues “Nelsa” sh.p.k. pas ankimit të KPP dhe pranimit të ankesës së tij nga ky i fundit, ngelet operatori ekonomik i vetëm në garë për këtë procedurë prokurimi dhe, sipas gjykimit të mbajtur nga anëtarja J. Hoxha, ai ngelet potencialisht fituese e kësaj kontrate. Në vendimin K.P.P. 363/2016, datë 20.05.2016 Komisioni i Prokurimit Publik ka gjykyar sipas mendimit të mbajtur nga anëtarja J. Hoxha e rrjedhimisht në kundërshtim me vendimin K.P.P. 296/2016, datë 05.05.2016., ku kjo anëtare ka dalë me mendim kundër shumicës.

Case II

Në vendimin **K.P.P. 185/2015**, datë 10.04.2015, Komisioni i Prokurimit Publik ka marrë në shqyrtim ankesën e Operatorit Ekonomik “Firdeus Security” sh.p.k., i cili kërkon kualifikimin e tij në procedurën e prokurimit “*Kërkesë për propozime*” me objekt: “*Ruajtja e godinës së Fondit Shqiptar të Zhvillimit dhe sigurimi fizik me roje private për periudhën Shkurt-Dhjetor 2015*”, me fond limit 2.631.836,13lekë pa TVSH, zhvilluar më datë 09.02.2015 nga autoriteti kontraktor, Fondi Shqiptar i Zhvillimit.

Operatori ekonomik “Firdeus Security” sh.p.k., është skualifikuar nga procedura e prokurimit me arsyen: “*Operatori ekonomik nuk ka paraqitur vërtetimin që konfirmon shlyerjen e të gjitha detyrimeve të maturuara të energjisë elektrike sipas formatit;*”

Operatori ekonomik ankimues, në dokumentacionin e dorëzuar elektronikisht në sistemin e prokurimeve elektronike, ka paraqitur:

- Vërtetim Debie nr. 868 prot., i datës 03.01.2015, ku citohet: [...] ..vërtetojmë se për kërkesin **Firdeus Security**..., përfaqësuar nga z.

S. R. titullar i së cilës është FirdeusSecurity sh.p.k., rezulton të ketë 0.00 lekë (zero) detyrime për faturat e energjisë elektrike, vlerë e llogaritur deri në datën 31.01.2015, pa përfshirë faturën koherente të muajit Dhj 2015.[...]

- *Kontrata TR1H030468260720 Titullari z. R. C. Adresë Rr. Kavajës Pall 0, shk,5 ap 4 Triranë.*
- *Librezë nr. i kontratës H/ 260720, 05.03.2015, ku rezulton shlyerjen e pagesës së energjisë elektrike për muajin Dhjetor 2014 dhe Janar 2015 me datë 04.02.2015.*

Lidhur me dokumentacionin e sipercituar, Komisioni i Prokurimit Publik ka gjykuar se, operatori ekonomik ankimues “Firdeus Security” sh.p.k., me dokumentacionin e dorëzuar, nuk e ka plotësuar kriterin e vendosur nga autoriteti kontraktor pasi, vërtetimi i paraqitur nuk vërteton shlyerjen e të gjitha detyrimeve të maturuara të energjisë elektrike për periudhën më të fundit para hapjes së ofertave që tashmë ishte maturuar, datë 09.02.2015. Gjithashtu, KPP gjykon se, operatori ekonomik “Firdeus Security” sh.p.k., nuk ka paraqitur një dokument, vërtetim debie lështuar nga OSHEE, për shlyerjen e të gjitha detyrimeve të maturuara të energjisë elektrike të kontratave të energjisë që ka operatori ekonomik që është i regjistruar në Shqipëri.

Në vendimin **K.P.P. 699/2016**, datë 09.09.2016, Komisioni i Prokurimit Publik ka marrë në shqyrtim ankesën e Operatorit Ekonomik “Botime Shtypshkrime Dajti 2000” sh.p.k., i cili kërkon kualifikimin e tij në procedurën e prokurimit “Kërkesë për propozime” me Nr. REF-46074-07-27-2016 me objekt: “Shpenzime për shtypjen e teksteve (arsimit profesionale)”, me fond limit 3.791.667 lekë pa TVSH, zhvilluar në datën 18.08.2016, nga autoriteti kontraktor, Shtëpia Botuese e Tekseve Mësimore Botem.

Operatori ekonomik “Botime Shtypshkrime Dajti 2000” sh.p.k., është skualifikuar nga procedura e prokurimit me arsyen: “... vërtetimi Nr. 5885.prot, datë 07.07.2016 i lëshuar nga OSHEE nuk konfirmon shlyerjen e të gjitha detyrimeve të maturuara të energjisë elektrike të kontratave të energjisë që ka operatori ekonomik që është i regjistruar në Shqipëri

Operatori ekonomik ankimues, në dokumentacionin e dorëzuar elektronikisht në sistemin e prokurimeve elektronike, ka paraqitur:

- *Vërtetim Debie nr. 5885 prot., datë 07.07.2016, ku citohet: [...] ..vërtetohet se kërkuksi Botime dhe Shtypshkrime Dajti 2000, nga verifikimet e kryera në Sistemin e Faturimit, për kontratën/kontratën me kod TR1H030095158498, titullar i së cilës/cilave është “Abdyl Minga” sh.pk., rezulton të ketë 0 lekë (zero) detyrime për faturat e energjisë elektrike, vlerë e llogaritur deri në datën 06.07.2016 pa përfshirë dhe faturën koherente të muajit Qershor 2016.*
- *Faturë Tatimore Qershor 2016 (kopje elektronike datë 03.07.2016) të OSHEE, kodi i klientit: TR1H030095158498, në emër të “Botime dhe Shtypshkrime Dajti 2000” sh.p.k, totali për tu pagur 16,984.00 (afati i pagesës 31.07.2016).*
- *Njoftim debitimi lëshuar nga Raiffeisen Bank, datë 19.07.2016, për klientin “Botime dhe Shtypshkrime Dajti 2000”, detajet e pagesës TR1H030095158498641436439 1, Qershor 2016, shuma e urdhëruar 16,984.00. Njoftim debitimi rezulton të jetë i firmosur dhe vulosur po në datë 19.07.2016 nga Raiffeisen Bank.*

Lidhur me dokumentacionin e sipërcituar, Komisioni i Prokurimit Publik ka gjykuar se, operatori ekonomik ankimues “Botime dhe Shtypshkrime Dajti 2000 ” sh.p.k me anë të dokumentacionit që ka paraqitur në portalin elektronik të APP-së për këtë procedurë prokurimi, më konkretisht *Vërtetim debie, Faturën Tatimore lëshuar nga OSHEE dhe Njoftim debitimi vulosur nga Raiffeisen Bank*, krijon bindjen se me anë të paraqitjes së këtyre dokumenta të cilat i referohen operatorit ekonomik ankimues, me numër të njëjtën kontratë (TR1H030095158498) dhe shuma e maturuar vërtetuar nëpërmjet paraqitjes së Faturës tatimore dhe Njoftim debitimit korrespondon e njëjta konkretisht 16,984.00, operatori ekonomik ka shlyer detyrimet e maturuara të energjisë elektrike dhe është në përmbushje të kriterit të përcaktuar nga autoriteti kontraktor.

KONKLUZION

Referuar 2 vendimeve të sipërcituar, KPP ka rezultuar në dy vendimmarrje të ndryshme për të njëjtën themel çështjeje.

Në rastin e parë, operatori ekonomik "Firdeus Security" sh.p.k. ka dorëzuar Vërtetim Debie nr. 868 prot., i datës 03.01.2015, ku përcaktohet se kjo shoqëri për kontratën TR1H030468260720 rezulton të ketë 0.00 lekë (zero) detyrime për faturat e energjisë elektrike, vlerë e llogaritur deri në datën 31.01.2015, pa përfshirë faturën koherente të muajit Dhjetor 2015 dhe Librezën me numër kontrate të njëjtë H/ 260720, 05.03.2015, ku rezulton shlyerjen e pagesës së energjisë elektrike për muajin Dhjetor 2014 dhe Janar 2015 me datë 04.02.2015, dokumentacion ky, i cili nuk krijon tek KPP sigurinë dhe bindjen se i ka shlyer detyrimet e energjisë elektrike.

Ndërsa, në rastin e dytë, operatori ekonomik "Botime dhe Shtypshkrime Dajti 2000" sh.p.k., duke dorëzuar po një Vërtetim Debie nr. 5885 prot., datë 07.07.2016, ku përcaktohet se kjo shoqëri për kontratën/kontratën me kod TR1H030095158498, rezulton të ketë 0 lekë (zero) detyrime për faturat e energjisë elektrike, vlerë e llogaritur deri në datën 06.07.2016 pa përfshirë dhe faturën koherente të muajit Qershor 2016, Faturën Tatimore lëshuar nga OSHEE dhe njoftim debitimi vulosur nga Raiffeisen Bank, e ka bindur KPP se këto dokumenta i referohen të njëjtit operator me numër të njëjtë kontrate (TR1H030095158498).

Pra, për të njëjtin pretendim (shoqëruar me dokumenta/prova/fakte të ngjashme), K.P.P ka mbajtur dy gjykime të ndryshme.

Case III

Në vendimin **K.P.P. 239/2016**, datë 19.04.2016, Komisioni i Prokurimit Publik ka marrë në shqyrtim ankesën e Operatorit Ekonomik "Aulona Pol. 1" sh.p.k., i cili kërkon kualifikimin e tij në procedurën e prokurimit "Procedurë e hapur" me Nr. REF- 23665-02-11- 2016 me objekt: "Shërbimi privat i sigurisë fizike" për Ofrimin e shërbimit të sigurisë fizike të objekteve të Drejtorisë së Përgjithshme të Doganave, Ish godinen e Degës Doganore Tiranë, Laboratorin Kimik Doganor dhe Oficinën e DPD-së." me fond limit 14,109,888.84 lekë (pa TVSH), zhvilluar në datën 07.03.2016, nga autoriteti kontraktor, Drejtoria e Përgjithshme e Doganave.

- Në datën 21.03.2016 operatori ekonomik ankimues “Aulona Pol 1” sh.p.k. është njoftuar për skualifikimin e ofertës së tij nga kjo ptocedurë prokurimi.
- Në datën 29.03.2016 operatori ekonomik ankimues “Aulona Pol. 1” sh.p.k., ka paraqitur ankesë pranë autoriteti kontraktor, duke kundërshtuar skualifikimin e tij.
- Në datën 14.04.2016 operatori ekonomik ankimues “Aulona Pol 1” sh.p.k. ka paraqitur ankesë pranë Komisionit të Prokurimit Publik me të njëjtën objekt me ankesën e paraqitur pranë autoritetit kontraktor.

K.P.P. ka gjykuar se megjithëse ankesa e dorëzuar pranë autoritetit kontraktor është shqyrtuar nga ky i fundit, konstatohet se ankimi është dorëzuar jashtë afatit të parashikuar nga *lex specialis*, duke u pranuar nga autoriteti kontraktor një ditë pas përfundimit të tij duke mos u legjitimuar *ratione temporis* në dorëzimin e ankesës pranë autoritetit kontraktor.

Në vendimin **K.P.P. 455/2016**, datë 21.06.2016, Komisioni i Prokurimit Publik ka marrë në shqyrtim ankesën e Operatorit Ekonomik “Aulona Pol. 1” sh.p.k., i cili kërkon kualifikimin e tij në procedurën e prokurimit “*Kërkesë për propozim*” me Nr. REF-25625-02-25-2016, me objekt: “*Shërbim i ruajtjes me roje private të DRQ Tiranë*”, me fond limit 2.903.516 lekë (pa TVSH), zhvilluar në datën 07.03.2016, nga autoriteti kontraktor, Drejtoria e Rajonit Qendror Tiranë.

- Në datën 21.03.2016 operatori ekonomik ankimues “Aulona Pol 1” sh.p.k. është njoftuar për skualifikimin e ofertës së tij nga kjo ptocedurë prokurimi.
- Në datën 29.03.2016 operatori ekonomik ankimues “Aulona Pol. 1” sh.p.k., ka paraqitur ankesë pranë autoriteti kontraktor, duke kundërshtuar skualifikimin e tij.
- Në datën 08.04.2016 operatori ekonomik ankimues “Aulona Pol 1” sh.p.k. ka paraqitur ankesë pranë Komisionit të Prokurimit Publik me të njëjtën objekt me ankesën e paraqitur pranë autoritetit kontraktor.

K.P.P. e ka marrë në shqyrtim ankesën, duke e trajtuar themelin e saj dhe ka vendosur si përfundim pranimin e ankesës së operatorit ekonomik “Aulona Pol 1” sh.p.k.

KONKLUZION

Referuar 2 vendimeve të sipërcituar, kemi të bëjmë me të njëjtin operator ekonomik ankimues si dhe me të njëjtat afate (data) ankimimi.

-Në rastin e parë:

- Në datën 21.03.2016 njoftimi i skualifikimit;
- Në datën 29.03.2016 ankesë pranë autoriteti kontraktor;

KPP nuk e ka trajtuar themelin e ankesës së operatorit ekonomik ankimues “Aulona Pol. 1” shpk, duke vendosur njëzëri (5 vota) të mos e pranojë ankesën pasi, nuk janë respektuar afatet e ankimimit pranë Autoritetit Kontraktor. Pra ankesa është dorëzuar pranë Autoritetit kontraktor ditën e nesërme të përfundimit të afatit ligjor të dorëimit të ankesës.

-Në rastin e dytë:

- Në datën 21.03.2016 njoftimi i skualifikimit;
- Në datën 29.03.2016 ankesë pranë autoriteti kontraktor;

KPP e ka marrë në shqyrtim ankesën, duke e trajtuar në themel dhe ka vendosur njëzëri (5 vota) ta pranojë ankesën e operatorit ekonomik ankimues “Aulona Pol. 1” shpk pasi, nuk janë respektuar afatet e ankimimit pranë Autoritetit Kontraktor.

Pra, për të njëjtat data (afate ankimimi), K.P.P ka mbajtur dy gjykime të ndryshme.

Case IV

Në vendimin **K.P.P. 335/2016**, datë 16.05.2016, Komisioni i Prokurimit Publik ka marrë në shqyrtim ankesën e Operatorit Ekonomik “Safe” sh.p.k., i cili kërkon kualifikimin e tij në procedurën e prokurimit “*Kërkesë për propozim*” me Nr. REF-22825-02-03-2016, me objekt: “*Shërbimi i ruajtjes dhe sigurisë fizike me roje private për nevojat e*

Drejtorisë së Shëndetit Publik Dibër”, zhvilluar në datën 09.03.2016, nga autoriteti kontraktor, Drejtoria e Shëndetit Publik Dibër.

Operatori ekonomik ankimues “Safe” sh.p.k., është skualifikuar nga procedura e mësipërme e prokurimit me arsyen: *“Nuk keni paraqitur vërtetim për likuidimin e detyrimeve të taksave vendore për vitin 2015 për Qarkun Dibër (vend të cilin ju ushtroni aktivitetin) parashikuar në DST “Kriteret e vecanta të kualifikimit” pika 2.A.8...”*

Operatori ekonomik ankimues, në dokumentacionin e dorëzuar elektronikisht në sistemin e prokurimeve elektronike, ka paraqitur:

- *Vërtetim Nr. 46 Prot datë 11.02.2016, lëshuar nga Komuna Kashar, ku vërtetohet se subjekti “Safe” sh.p.k [...] ka shlyer detyrimet vendore për vitet 2012-2015;*
- *Vërtetim Nr. 161 Prot datë 04.02.2016, lëshuar nga Bashkia Tiranë, ku vërtetohet se subjekti “Safe” sh.p.k [...] ka shlyer detyrimet vendore deri në vitin 2015;*
- *Nga shqyrtimi i Ekstraktit Historik të Rregjistrimit Tregtar të shoqërisë “Safe” sh.p.k, të lëshuar nga QKR më datë 24.02.2016, rezulton se në pikën 7 “Zyra qendrore e shoqërisë” tek “Gjendja e regjistrimit”, zyrat qendrore të shoqërisë ndodhen në Tiranë dhe pika 14 “Vënde të tjera të ushtrimit të aktivitetit”, nuk ka informacion për vënde të tjera të ushtrimit të aktivitetit.*

K.P.P. ka gjykuar se nisur nga të dhënat e regjistruara, të pasqyruara në Ekstraktin Historik të subjektit “Safe” sh.p.k, nuk konstatohet që ky operator të ketë ushtruar aktivitet në njësi tjetër administrative, përveç Qarkut Tiranë në periudhën e kërkuar nga autoriteti kontraktor. (*dmth gjatë vitit 2015*)

Në vendimin **K.P.P. 687/2016**, datë 02.09.2016, Komisioni i Prokurimit Publik ka marrë në shqyrtim ankesën e Operatorit Ekonomik “Res-03” sh.p.k., i cili kërkon skualifikimin e shoqërisë “Safe” sh.p.k. nga procedura e prokurimit “Procedurë e hapur” me Nr. REF-32222-04-06-2016 me objekt: *“Shërbim dhe ruajtje me roje private e objekteve të Bashkisë Bulqizë dhe Institucioneve në varësi.”*, me fond limit 5.160.173

lekë pa TVSH e zhvilluar në datën 16.05.2016, nga autoriteti kontraktor, Bashkia Bulqizë.

Operatori ekonomik ankimues “Res-03” sh.p.k., ngre pretendimin se shoqëria “Safe” sh.p.k: “Në Kapacitetin Ekonomik dhe Financiar, pika 3 dhe 4 kërkohet : “Vërtetim lëshuar nga Bashkia për shlyerjen e taksave vendore, të parashikuara nga Pushteti Vendor për vitin 2015”. Shoqëria “SAFE” sh.p.k nuk ka paraqitur vërtetim për shlyerjen e kësaj takse në Qarkun e Dibrës.”

Operatori ekonomik ankimues, në dokumentacionin e dorëzuar elektronikisht në sistemin e prokurimeve elektronike, ka paraqitur:

- *Ekstrakt historik, datë 01.04.2016;*
- *Akt miratimi (Për Qendrën e Kontrollit të SHPSF) nr. 325 Prot, datë 30.09.2015;*
- *Vlerësim performance të subjektit “Safe” sh.p.k, nr. 137 Prot., datë 10.03.2016;*
- *Kontratë qeraje Nr. 1126 Rep., Nr. 259/1 Kol, lidhur në datë 13.02.2015 në zyrën e Notarisë Peshkopi + planimetri vendosje;*
- *Vërtetim për likuidimin e detyrimeve vendore, nr. 46 Prot, datë 11.02.2016 lëshuar nga Zyra e Tatim Taksave Kashar;*
- *Vërtetim për likuidimin e detyrimeve vendore, nr. 161 Prot, datë 04.02.2016 lëshuar nga Drejtoria e Përgjithshme e Taksave dhe Tarifave Vendore, Bashkia Tiranë;*

K.P.P., në interpretim të gjykimit të tij mbi dokumentacionin e sipërcituar ka sjellë në vëmendje edhe dispozitat ligjore si më poshtë:

- Në ligjin nr. 75/2014 “Për Shërbimin Provat të Sigurisë Fizike”, neni 22 “Qendra e kontrollit të Shpsf-së” përcaktohet se:
 1. *Subjekti i licencuar për aktivitetin e shërbimit privat të sigurisë fizike, në çdo njësi administrative që ushtron veprimtari, duhet të ketë qendër kontrolli, ku të tregohet adresa e saj fizike dhe elektronike, si dhe stema me emërtimin e shoqërisë. ...*
- Në udhëzimin nr. 157, datë 1.4.2015 “Për funksionimin e shërbimit privat të sigurisë fizike”, pika C “Organizimi i shërbimit

në qendrën e kontrollit”, pika 3 përcaktohet se: “Qendra e kontrollit vendoset në ambientet e SHPSF-së dhe të ofrojë kapacitetin dhe potencialin e duhur teknik për realizimin e veprimtarisë të ruajtjes dhe sigurisë fizike. Çdo subjekt i SHPSF-së duhet të ketë në administrim qendrën e tij të kontrollit (pronësi/qira) në çdo njësi administrative që ushtron aktivitetin e saj”.

K.P.P., ka gjykuar se, nga kuptimi literal i pikës 1 të nenit 22 të ligjit nr. 75/2014 datë 10.07.2014, do të thotë se shoqëria e shërbimit privat të sigurisë fizike duhet të disponojë në një nga format ligjore qendër kontrolli në çdo njësi administrative që ushtron veprimtari. [...] Në këtë kuptim, duke qenë se shoqëria “Safe” sh.p.k disponon qendër kontrolli në qytetin e Dibrës që nga data 30.09.2015, dhe për pasojë ka ushtruar aktivitet në këtë qytet në vitin 2015, detyrimisht duhet të kishte paraqitur vërtetim për shlyerjen e taksave vendore nga Bashkia Dibër për vitin 2015.

KONKLUZION

Referuar 2 vendimeve të sipërcituar, kemi të bëjmë me të njëjtin pretendim (*mos paraqitje të vërtetimit mbi shlyerjen e taksave vendore për periudhën 2015*) për të njëjtin operator ekonomik, e konkretish shoqërinë “Safe” sh.p.k.

- Në rastin e parë, K.P.P. nga shqyrtimi i dokumentacionit të shoqërisë “Safe” sh.p.k. gjykon se kjo shoqëri nuk ushtron aktivitetin e saj në Qarkun e Dibrës pasi, në Ekstraktin e shoqërisë, pika 14 “*Vënde të tjera të ushtrimit të aktivitetit*”, nuk ka informacion për vënde të tjera të ushtrimit të aktivitetit.
- (Fakt) Në Dokumentat e Tenderit të publikuara nga Drejtoria e Shëndetit Publik Dibër, për këtë procedurë, në Shtojcën 6 “*Kriteret e Vecanta të Kualifikimit*”, “*Kapaciteti teknik*”, pika 3 autoriteti kontraktor ka kërkuar që operatorët ekonomikë të plotësojnë kushtin: “*Vërtetim lëshuar nga Dr. Policisë Qarkut Dibër për disponueshmërinë e Qendrës së kontrollit të shërbimeve nga operatori/ sallë operative. (Ligji 75/2014 neni 22).*”

Sa më sipër, nëse KVO e autoritetit kontraktor nuk ka gjykuar ndryshe lidhur me plotësimin e kriterit të sipërcituar në Shtojcën 6, pika 3 e Kapacitetit teknik prej shoqërisë “Safe” sh.p.k., atëherë kjo e fundit

zotëron Qendër Kontrolli në Qarkun Dibër, e rrjedhimisht ajo ushtron aktivitet në këtë qark.

Në rastin e dytë K.P.P. ka gjykuar se kjo shoqëri ushtron aktivitetin e saj në Qarkun Dibër pasi ajo zotëron Qendër Kontrolli në këtë qark, çka rrjedhimisht e ngarkon atë me shlyerjen e detyrimeve të taksave vendore në këtë Qark.

Pra, për të njëjtin themel (mosparaqitja e vërtetimit mbi shlyerjen e taksave vendore 2015, në vendin ku ushtron aktivitetin shoqëria) K.P.P ka mbajtur dy gjykime të ndryshme.

Case V

Në vendimin **K.P.P. 41/2016**, datë 21.01.2016, Komisioni i Prokurimit Publik ka marrë në shqyrtim ankesat e Operatorëve Ekonomikë “Nazeri 2000” sh.p.k. dhe “Safe”, të cilët kundërshtojnë skualifikimin e tyre nga procedura e prokurimit “*Kërkesë për propozime*”, nr. REF-12497-10-22-2015, me objekt “*Loti 1: Shërbimi i Ruajtjes dhe Sigurisë Fizike të ambienteve nën administrimin e DRSHTRR Peshkopi*”, me fond limit 3.011.645 lekë (pa TVSH), zhvilluar në datën 10.11.2015, nga autoriteti kontraktor, Drejtoria Rajonale e Shërbimeve të Transportit Rrugor, Dibër.

- Operatorët ekonomikë “Nazeri 2000” sh.p.k. dhe “Safe” sh.p.k., janë skualifikuar nga procedura e prokurimit me arsyen: *“Vërtetimi i Drejtorisë së Policisë është jashtë afatit 3 mujor të kërkuar në DST”*
- Në datën 10.11.2015, autoriteti kontraktor ka zhvilluar procedurën e mësipërme të prokurimit.
- Në dokumentet e tenderit, shtojca 6, pika 2 “*Kriteret e Veçanta të Kualifikimit*”, Kapaciteti teknik, pika 4 kërkohet: “*Vërtetim nga Drejtoria e Policisë së Qarkut Dibër për punonjësit e licencuar, ku të jetë përcaktuar numri dhe emri i punonjësve dhe për përgjegjësin e tyre, vërtetim ky që të jetë i lëshuar jo më shumë se 3 muaj nga data e pjesëmarrjes në konkurim.*”

- Operatori ekonomik ankimues “Nazeri 2000, në dokumentacionin e dorëzuar elektronikisht në sistemin e prokurimeve elektronike, ka paraqitur: *“Vërtetim nga Drejtoria e Policisë së Qarkut Dibër me nr. 462 prot., datë 10.08.2015”*
- Operatori ekonomik ankimues “Safe, në dokumentacionin e dorëzuar elektronikisht në sistemin e prokurimeve elektronike, ka paraqitur: *“Vërtetim nga Drejtoria e Policisë së Qarkut Dibër me nr. 463 prot., datë 10.08.2015”*

Lidhur me dokumentacionin e sipercituar, të dorëzuar prej operatorëve ekonomikë “Nazeri 2000” sh.p.k. dhe “Safe” sh.p.k., Komisioni i Prokurimit Publik ka gjykuar se nuk është në përputhje me kërkesën e përcaktuar nga autoriteti kontraktor në Dokumentat e Tenderit.

Në vendimin **K.P.P. 683/2017**, datë 04.10.2017, Komisioni i Prokurimit Publik ka marrë në shqyrtim ankesën e Bashkimit të Operatorëve Ekonomikë [“Euraldi” sh.p.k. & “Curri” sh.p.k.], të cilët kundërshtojnë skualifikimin e tyre nga procedura e prokurimit *“Procedurë e Hapur”*, me objekt *“Sistemin asfaltim rruga e fshatrave Grazhdan, Pilafe, Majtare e Poshtëme dhe Lagjes Aksioni, Peshkopi”*, me nr. REF-21545-07-19-2017, me fond limit 50,971,385 lekë (pa TVSH), zhvilluar në datën 15.08.2017, nga autoriteti kontraktor Bashkia Dibër.

- BOE [“Euraldi” sh.p.k. & “Curri” sh.p.k.], është skualifikuar nga procedura e prokurimit me arsyen: *“[...]1.Vërtetimi për shlyerjen e detyrimeve tatimore që lindin nga ushtrimi i aktivitetit Vërtetimi i lëshuar nga Administrata Tatimore për “EURALDI” sh.p.k është i datës 31.03.2017, pra nuk plotëson kriteret e përgjithshme të DST”*
- Në datën 15.08.2017, autoriteti kontraktor ka zhvilluar procedurën e prokurimit.
- Në shtojcën nr. 10, pika 2 “Kriteret e përgjithshme të pranimit/kualifikimit” në dokumentat standarte të tenderit në procedurën e prokurimit objekt ankimi, autoriteti kontraktor ka kërkuar si më poshtë vijon: *“2. Një dokument që vërteton se (subjekti juaj): a) ka plotësuar detyrimet fiskale, b) ka paguar të*

gjitha detyrimet e sigurimeve shoqërore, të lëshuar nga Administrata Tatimore. Kriteret e Përgjithshme për Pranim, nuk duhet të ndryshohen nga autoritetet kontraktore. Këto kritere (pikat 1,2) duhet të vërtetohen përmes dokumentave të lëshuar jo më parë se tre muaj nga dita e hapjes së ofertës.

- BOE ankimues [“Euraldi” sh.p.k. & “Curri” sh.p.k.] në dokumentacionin e dorëzuar elektronikisht në sistemin e prokurimeve elektronike, ka paraqitur:
 1. Vërtetim për shlyerjen e të gjitha detyrimeve tatimore, nr. 2052 prot, datë 15.05.2017, lëshuar nga Drejtoria Rajonale Tatimore Dibër.
 2. Vërtetim xhiro për vitet 2014, 2015, 2016, nr. 2053 prot, datë 15.05.2017, lëshuar nga Drejtoria Rajonale Tatimore Dibër.
 3. Vërtetim për kontributet e sigurimeve shoqërore e shëndetësore për tatimpaguesin për periudhën Janar-Qershor 2017, nr. 2763 prot., datë 01.08.2017, lëshuar nga Drejtoria Rajonale Tatimore Dibër.

Nga verifikimet e kryera në Sistemin e Prokurimeve Elektronike në lidhje me dokumentacionin e dorëzuar në plotësim të kritereve të pranim/kualifikimit, KPP konstaton se operatori ekonomik “EURALDI” sh.p.k, pjesëtar BOE ankimues, ka dorëzuar 3 vërtetime të lëshuara nga Drejtoria Rajonale Tatimore Dibër, të cilat dy prej tyre mbajnë datën 15.05.2017 dhe një prej tyre mban datën 01.08.2017. Bazuar në faktin se procedura e prokurimit objekt ankimi është zhvilluar në datën 15.08.2017, KPP vëren se vërtetimet e dorëzuara nga operatori ekonomik “EURALDI” sh.p.k, janë lëshuar nga autoriteti përkatës brenda afatit 3 muaj të përcaktuar [...].

KONKLUZION

Referuar 2 vendimeve të sipërcituar, në thelb kemi të bëjmë me të njëjtin pretendim, “*mos paraqitje të një vërtetimi të lëshuar jo më parë se tre muaj nga dita e hapjes së ofertës*”.

- Në rastin e parë, dita përfundimtare e hapjes së ofertave ka qenë data 10.11.2016 dhe dokumentat (vërtetimet) e dorëzuara mbajnë datën

10.08.2016. Këto dokumente (vërtetime) në gjykimin e KPP nuk plotësojnë kriterin e përcaktuar në DT, pra janë jashtë afatit 3 mujor nga data e hapjes së ofertave;

- Ndërsa, në rastin e dytë, dita përfundimtare e hapjes së ofertave ka qenë data 15.08.2017 dhe dokumentat (vërtetimet) e dorëzuara mbajnë datën 15.05.2017. Këto dokumente (vërtetime) në gjykimin e KPP në këtë rast janë në përputhje me kriterin e përcaktuar në DT, pra janë brenda afatit 3 mujor nga data e hapjes së ofertave;

Pra, për të njëjtin themel (mos paraqitje të një vërtetimi të lëshuar jo më parë se tre muaj nga dita e hapjes së ofertës) K.P.P ka mbajtur dy gjykime të ndryshme.

Case VI

Në vendimin **K.P.P. 363/2015**, datë 04.06.2015, Komisioni i Prokurimit Publik ka marrë në shqyrtim ankesën e Operatorit Ekonomik “Aulona Pol. 1” sh.p.k., i cili kërkon skualifikimin e shoqërisë “Nazeri 2000” sh.p.k. nga procedura e prokurimit “*Procedurë e hapur*” me objekt: “*Shpenzime për policinë private*” me fondi limit 15 951 800 (pesëmbëdhjetë milion e nëntëqind e pesëdhjetë e një mijë e tetëqind) lekë pa TVSH, zhvilluar më datë 30.03.2015 nga autoriteti kontraktor, Albcontrol Sh.a.

Konkretisht pretendimi i ngritur nga ankimesi është si më poshtëcitur: “[...] Në datën 09.04.2015 në faqen e APP-së në sistem kemi marrë një mesazh nga autoriteti kontraktor ku kërkohet të bëhet një rregullim aritmetikor të konstatuar nga KVO ku thuhet se ekziston një mospërputhje midis çmimit total të ofertës që është paraqitur, çmimi për njësi dhe oferta sipas KVO të autoritetit kontraktor Albkontrol sh.a duhet të jetë në vlerën 10.764.376,36 lekë pa tvsh dhe jo 10.764.374,4 lekë pa tvsh.

Shoqëria “Aulona Pol. 1” sh.p.k duke respektuar vullnetin e autoritetit kontraktor pra, duke marrë të mirëqenë faktin se përllogaritja e tij do t’ju sugjerohej dhe operatorëve të tjerë, duke marrë të mirëqenë faktin se ky rregullim vinte si pasojë e zbatimit të parimit e barazisë para ligjit lidhur me marrjen në referencë të të njëjtit numër shifrash pas presjes dhjetore për llogaritjen e kostos së saktë, pranoi korrigjimin e bërë nga autoriteti

kontraktor Albcontrol sh.a, duke paraqitur ofertën me dy lekë më shumë se ofertën e parë.

[...] Autoriteti kontraktor duhet të respektojë parimin e barazisë në tenderin e operatorëve ekonomikë dhe jo të ndërmarrë veprime që e shkelin këtë parim. Oferta jonë e parë ishte 10.764.374, pasi ne kishim bërë analizën tonë të kostos mbështetur, jo vetëm në legjislacionin në fuqi por edhe në standartin e barabartë të përllogaritjes që ka vendosur Komisioni i Prokurimit Publik. Nëse oferta jonë u korrigjua, automatikisht edhe oferta e operatorëve të tjerë konkretisht e operatorit fitues “Nazeri 2000” sh.p.k duhej të ishte korrigjuar, ose në rast të kundërt duhej të skualifikohej nga autoriteti kontraktor.

Nisur nga ankesa e operatorit ekonomik “Aulona Pol 1” sh.p.k., Komisioni i Prokurimit Publik konstaton se formulari i ofertës ekonomike të operatorit ekonomik “Aulona Pol 1” sh.p.k është paraqitur dhe plotësuar sipas kërkesave të parashikuara nga A.K. në DT si dhe nuk paraqet gabime aritmetikore dhe nuk është i nevojshëm korrigjimi i tyre, pasi shuma që rezulton nga përllogaritjet e sasisë (koeficienti i rojeve për vendroje) me çmimin për njësi (pagën mujore për një roje) dhe periudhën kohore (kohëzgjatja e shërbimit) është e saktë, dhe përmban vlerën prej 10.764.374 lekë pa T.V.SH.

Përsa më sipër pretendimi i operatorit ekonomik “Aulona Pol 1” sh.p.k. qëndron.

Lidhur me pretendimin e operatorit ekonomik “Aulona Pol 1” sh.p.k. mbi ofertën e shoqërisë “Nazeri 2000” sh.p.k, nga shqyrtimi i ofertave të dy operatorëve ekonomikë “Aulona Pol 1” sh.p.k. dhe “Nazeri 2000” sh.p.k, formulari i ofertave është identik, referuar sasisë (koeficienti i rojeve për vendroje) me çmimin për njësi (pagën mujore për një roje) dhe periudhën kohore (kohëzgjatja e shërbimit). Rrjedhimisht, pretendimi i parashtruar nga “Aulona Pol 1” sh.p.k, në lidhje me këtë pikë nuk qëndron.

Në vendimin **K.P.P. 2/2016**, datë 07.01.2016, Komisioni i Prokurimit Publik ka marrë në shqyrtim ankesën e Operatorit Ekonomik “Nazeri 2000” sh.p.k., i cili kërkon skualifikimin e operatorëve ekonomikë “Toni Security” sh.p.k dhe “International Security Albania” sh.p.k. nga procedura e prokurimit “Procedurë e Hapur”, REF-05198-07-22-2015,

me objekt: “Shërbim i ruajtjes dhe sigurisë fizike”, Loti 2 me fond limit 12 521 450 lekë (pa tvsh), zhvilluar në datën 08.10.2015 nga autoriteti kontraktor, Drejtoria e Përgjithshme e RTSH.

- Konkretisht ndër të tjera, pretendimi i ngritur nga ankimuesi është si më poshtëcitur: *Korrigjimin e ofertave të shoqërive “Toni Security” sh.p.k dhe “International Security Albania” sh.p.k., duke rrespektuar parimin e barazisë. Autoriteti kontraktor, siç kërkoi korrigjimin e ofertës së shoqërisë “Nazeri 2000” sh.p.k., duhet tu a kërkojë edhe këtyre shoqërive. Sipas ankimuesit, oferta e tij e korrigjuar duhej të merrej prej autoritetit kontraktor si vlera minimale e kostos ligjore, dhe çdo ofertë nën vlerën e korrigjuar të shoqërisë “Nazeri 2000” sh.p.k. nuk ka respektuar koston ligjore të shërbimit.*

Sa më sipër, KPP referuar në mënyrë specifike pretendimeve të parashtruara në ankesën e paraqitur nga operatori ekonomik ankimues “Nazeri 2000” sh.p.k., verifikoi ofertën e paraqitur nga operatori ekonomik “International Security Albania” sh.p.k. ku konstatoi se nuk rezulton të ketë asnjë gabim aritmetik e rrjedhimisht, duke mos pranuar pretendimin e operatorit ekonomik ankimues “Nazeri 2000” sh.p.k.

KONKLUZION

Referuar 2 vendimeve të sipërcituar, në thelb kemi të bëjmë me të njëjtën çështje dhe rrjedhimisht me të njëjtin pretendim:

- “Kërkesë për korrigjim të ofertës nga ana e autoritetit kontraktor dhe pranim të korrigjimit nga operatorët ekonomikë për procedurat e prokurimit respektive”.
- “Pretendim i operatorëve ekonomikë ankimues se oferta e tyre e korrigjuar është oferta e rregullt dhe në përmbushje të kërkesave të përcaktuara nga AK në Dokumentat e Tenderit si dhe zbatimi i parimit të barazisë nga AK edhe për ofertat e operatorëve të tjerë pjesëmarrës”.

Në rastin e parë, Komisioni i Prokurimit Publik ka shqyrtuar ofertën ekonomike të korrigjuar të shoqërisë “Aulona Pol. 1” sh.p.k. (duke mos e pasur objekt ankese) dhe ka gjykuar se autoriteti kontraktor ka vepruar

gabim, duke kërkuar korrigjimin e ofertës ekonomike të kësaj shoqërie, pra veprimet e autoritetit kontraktor në këtë rast janë të pa sakta;

Në rastin e dytë, KPP, edhe pse oferta ekonomike e shoqërisë “Nazeri 2000” sh.p.k. është korrigjuar nga autoriteti kontraktor, nuk e ka marrë fare në shqyrtim nëse ky korrigjim i ofertës ekonomike është i regullt apo jo, gjë që rrjedhimisht sjell se veprimet e autoritetit kontraktor në këtë rast janë të sakta;

Pra, për të njëjtin themel ankese, Komisioni i Prokurimit Publik ka mbajtur dy gjykime të ndryshme.

Case VII

Në vendimin **K.P.P. 54/2017**, datë 09.02.2017, Komisioni i Prokurimit Publik, ndër të tjera, ka marrë në shqyrtim ankesën e Operatorit Ekonomik “Nazeri 2000” sh.p.k, i cili kërkon skualifikimin e shoqërisë “Aulona Pol. 1” sh.p.k. nga procedura e prokurimit “Procedurë e Hapur” me objekt “*Shërbim privat i sigurisë fizike të Universitetit të Tiranës dhe filialit*”, e ndarë në lote, loti 2 me objekt “*Shërbim privat i sigurisë fizike të filialit të UT, Sarandë*” me Nr. Ref-56508- 11-03-2016 me fond limit 2,980,514 leke pa TVSH, zhvilluar në datë 05.12.2016 nga autoriteti kontraktor Universiteti i Tiranës.

Konkretisht pretendimet e ngritur nga ankimuesi janë si më poshtëcituat:

- i. *Shoqëria “Aulona –Pol -1 nuk ka paraqitur në dokumentat e tenderit autorizim individual nga AKEP për sistem radiokomunikimi për qytetin e Saradnës si edhe nuk ka paraqitur as pagesat përkatëse të AKEP për radiokomunikimin e qytetit të Saradnës për vitin 2015 dhe vitin 2016;*

Lidhur me pretendimin e sipërcituar, KPP ka gjykuar se, operatori ekonomik “Aulona Pol 1” shpk, me anë të dokumentacionit të dorëzuar në SPE, nuk ka provuar se disponon Autorizim Individual për Përdorim Frekuencash në brezat VHF, UHF, për sisteme Radiokomunikimi me zonë mbulimi qytetin e Sarandës, në përputhje me kriteret e veçanta të kualifikimit.

Rrjedhimisht KPP ka pranuar pretendimin e operatorit ekonomik ankimues “Nazeri 2000” shpk.

Më tej, KPP në pikën III.8.1. shprehet lidhur me informacionin e ankimuesit të paraqitur si fakte e prova në ankesën e tij, e konkretisht:

III.8.1. Komisioni i Prokurimit Publik konstaton se ankimuesi, në ankesën dorëzuar pranë këtij të fundit ka ngritur pretendime në lidhje me mosplotësimin e dokumentacionit të dorëzuar në Sistemin e Prokurimeve Elektronike nga ana e operatorit ekonomik “Aulona Pol 1” shpk, duke dhënë sqarime të plota mbi natyrën konkrete të dokumentacionit të dorëzuar në Sistemin e Prokurimeve Elektronike, përfshirë numrin e saktë të Autorizimeve për Përdorim Frekuencash për Radiokomunikim dhe Radioalarm, llojit dhe natyrës së autorizimeve, zonës së mbulimit, si edhe numrin e faqes korensponduese të dokumentacionit të dorëzuar në procedurën e prokurimit objekt ankimi.

KPP gjykon se të dhënat e mësipërme të deklaruara janë dokumentacion sekret tregëtar në kuptim të nenit 25 të ligjit nr. 9643 datë 20.11.2006 “Për prokurimin Publik”, të ndryshuar.

III.8.2. Të ndodhur në këto kushte, Komisioni i Prokurimit Publik konstaton se shqyrtimi i çështjeve të mësipërme është jashtë kompetencës lëndore të këtij të fundit dhe në zbatim të nenit 13 të *lex specialis* i propozon Ajencisë së Prokurimit Publik nisjen e hetimit administrativ në lidhje me konstatimet e mësipërme.

Në vendimin **K.P.P. 152/2017**, datë 21.03.2017, Komisioni i Prokurimit Publik ka marrë në shqyrtim ankesën e Operatorit Ekonomik “Myrto Security” sh.p.k, i cili kërkon skualifikimin e shoqërive “Nazeri 2000” shpk, “Oktapus 1 Security” shpk, “Safe” shpk, “Ballazhi” shpk, “Eurogjici Security” shpk, “Firdeus Security” shpk, “Snajper Security” shpk, “Trezhnjeva” shpk, “Ales” shpk, “Global Security” shpk, “International Security Albania” shpk, “SSX” shpk dhe Oktapus” shpk nga procedura e prokurimit “Kërkesë për propozim”, me Nr.Ref-65266-01-17-2017, me objekt: “Shërbimi i Ruajtjes dhe Sigurisë Fizike i ambienteve të ISHP-së”, me fond limit 4.723.738 lekë pa tvsh, zhvilluar në datë 30.01.2017, nga autoriteti kontraktor Instituti i Shëndetit Publik.

Konkretisht pretendimet e ngritur nga ankimuesi janë si më poshtëcituat:

I. Oferta e operatorit "Toni Security" duhet refuzuar pasi ky operator ka gabuar ne llogaritjen e cmimit te ofertes. [...].

II. Operatoret "Nazeri 2000", "Oktapus 1 Security", "Safe", Ballazhi", "Eurogjici Security", "Firdeus Security", "Snajper Security", "Trezjnjeva" "Ales", "Global Security", "International Security Albania", "SSX", dhe Oktapus":

- 1. Nuk kanë personelin e mjaftueshëm për realizimin e kontratës, vërtetuar kjo me vërtetim me listë emërore të lëshuar nga Drejtoria Vendore e Policisë Tiranë, pasi certifikatat e punonjësve të shërbimit i kanë përtej afatit 4-vjeçar të vlefshmërisë së tyre, sipas përcaktimeve të Shtojcës 6 të DST ("kapaciteti teknik", pika 2.2, si dhe pikës 3 "kapaciteti ligjor");*
- 2. Nuk provojnë se kanë paguar detyrimet për faturat e konsumit të energjisë elektrike ndaj OSHEE Sh.a, në objektet që kanë në pronësi ose në përdorim, sipas vendodhjes së ushtrimit të aktivitetit rregjistruar në Qendrën Kombëtare të Biznesit. [...];*
- 3. Nuk kanë paraqitur deklaratë për numrin e radiove që kanë në pronësi (Shtojca 6, ("kapaciteti teknik", pika 2.4);*

Lidhur me pretendimet e mësipërme të ankimuesit, Komisioni i Prokurimit Publik ka gjykuar se në ankesën drejtuar pranë K.P.P, operatori ekonomik ankimues “Myrto Security” shpk nuk parashtrohet fakte apo dyshime të bazuara, por ngre pretendime a-priori për operatorët e tjerë ekonomikë të kualifikuar. [...] Sipas KPP, operatori ekonomik ka detyrimin që ta bëjë të identifikueshëm pretendimin e tij mbi shkeljen e pretenduar, pra të evidentojë qartë dhe saktë se ku e bazon pretendimin e tij [...] Për rrjedhojë, pretendimet e ankimuesit “Myrto Security” shpk nuk merren shqyrtim.

KONKLUZION

Referuar 2 vendimeve të sipërcituat, në thelb kemi të bëjmë me pretendime të qarta:

- Në rastin e parë kemi 4 pretendime;
- Në rastin e dytë kemi 3 pretendime;

Në rastin e parë, pretendimet ngrihen për një operator, e konkretisht për shoqërinë “Aulona Pol. 1” sh.p.k., ndërsa në rastin e dytë pretendimet ngrihen për disa operatorë, e konkretisht për shoqëritë "Nazeri 2000", "Oktapus 1 Security", "Safe", Ballazhi", "Eurogjici Security", "Firdeus Security", "Snajper Security", "Trezjnjeva" "Ales", "Global Security", "International Security Albania", "SSX", dhe Oktapus" sh.p.k.

Në rastin e parë, Komisioni i Prokurimit Publik ka marrë në shqyrtim pretendimet e ankimuesit, i ka dhënë të drejtë atij sidhe në përfundim ka konkluduar me faktin se pretendimi i ankimuesit përmbante informacion të bazuar mbi prova e fakte teper të sakta dhe si i tillë duhej të hetohej administrativisht nga Agjencia e Prokurimeve Publike;

Në rastin e dytë, KPP, nuk i ka marrë në shqyrtim pretendimet e ankimuesit, duke i quajtur ato pretendime të ngritura apriori dhe si të pabazuara në prova e fakte, duke konkluduar në investimin e saj mbi trajtimin e themelit të kësaj ankese;

Pra, Komisioni i Prokurimit Publik një herë shprehet se pretendimet nuk duhen ngritur a-priori, por të bazuara në prova e fakte dhe një moment tjetër, kur pretendimet janë te bazuara në prova e fakte, shprehet se këto pretendime janë ngritur mbi informacione sekrete e konfidenciale, por se gjykimi i këtyre çështjeve nuk është kompetencë lëndorë e tij, edhe pse si përfundim e merr në shqyrtim themelin e çështjes në fjalë. Në këtë rast operatori ekonomik ankimues, i cili ka paraqitur fakte e prova të sakta, do të këtë sukses në ankesën e tij pranë KPP por, do të përballlet me nje hetim administrativ kundrejt tij prej APP-së, të rekomanduar prej KPP.

Pra, çdo pretendim i ngritur prej operatorëve ekonomikë ankimues, që të mos jetë a-priori dhe të mërrët në shqyrtim nga KPP, duhet të bazohet të prova e fakte por, nëse ndodh kështu, KPP gjykon se këto prova e fakte të paraqitura përbëjnë thyerje të konfidencialitetit pasi janë dokumente sekrete, e si pasojë duhet të nisë hetim administrative lidhur me burimin e tyre.

Case VIII

Në vendimin **K.P.P. 143/2017**, datë 20.03.2017, Komisioni i Prokurimit Publik ka marrë në shqyrtim ankesën e Operatorit Ekonomik “Nazeri 2000” sh.p.k, i cili kërkon skualifikimin e shoqërive “Arb-Security” sh.p.k, “Security Korça” sh.p.k, “Vaso Security” sh.p.k dhe “Eurogjici Security” sh.p.k. nga procedura e prokurimit “*Kërkesë për propozim*”, me nr. REF-66515-02-02-2017, me objekt “*Ruajtja me roja civile e ndërtesës së Prokurorisë pranë Gjykatës së Shkallës së Parë Korçë, një vendroje, çdo ditë, 24 orë në ditë, nga data 01.03.2017 deri ne datën 31.12.2017*”, me fond limit 2.520.000 lekë pa tvsh, zhvilluar në datën 14.02.2017, nga autoriteti kontraktor, Prokuroria pranë Gjykatës së Shkallës së Parë Korçë.

Konkretisht pretendimet e ngritura nga ankimuesi janë si më poshtëcitur:

1. *Autoriteti kontraktor duhet të skualifikojë shoqëritë “Arb Security” sh.p.k dhe “Security Korça” sh.p.k pasi nuk kanë ofertuar për periudhën e kërkuar nga autoriteti kontraktor për 10.06 muaj si dhe kanë ofertuar nën koston ligjore.*
2. *Autoriteti kontraktor duhet të skualifikojë shoqëritë “Arb Security” sh.p.k, “Security Korça” sh.p.k, “Vaso Security” sh.p.k dhe “Eurogjici Security” sh.p.k pasi:*
 - a. *Në vërtetimin e OSHEE-së nuk pasqyrohet që kanë shlyer detyrimet për të gjitha kontratat të cilat i kanë të hapura sipas QKR-së si vend ushtrimi të aktivitetit pasi këto shoqëri kanë edhe salla kontrolli në këto qytete;*
 - b. *Nuk kanë paraqitur dokumentin e AKEP-it për sistem radiokomunikimi dhe radioalarmi për zonën në të cilën kërkohet ofrimi i shërbimit;*
 - c. *Nuk plotësojnë dokumentacionin e nevojshëm për shërbime të ngjashme në vlerën e kërkuar nga autoriteti kontraktor;*
 - d. *Certifikatat e punonjësve nuk janë të vlefshme brenda afatit 4 vjeçar për numrin e kërkuar nga autoriteti kontraktor. Pra këto shoqëri nuk kanë vendosur në dokumentat e tenderit 5 certifikata të vlefshme brenda afatit 4 vjeçar si dhe nuk kanë*

paraqitur vërtetim që të vërtetojnë se kanë sallë operative në Korçë;

- e. Nuk kanë përmbushur kërkesën e autoritetit kontraktor për analizë të detajuar të kostos [...] ku të përfshihen të gjitha shpenzimet që kërkojnë nga ligji;*

Lidhur me pretendimet e mësipërme të parashtruara prej ankimuesit në ankesën e tij, KPP ka marrë në shqyrtim themelin e saj duke shqyrtuar secilin pretendim për operatorët ekonomikë “Arb Security” sh.p.k, “Security Korça” sh.p.k, “Vaso Security” sh.p.k dhe “Eurogjici Security” sh.p.k.

Në vendimin **K.P.P. 152/2017**, datë 21.03.2017, Komisioni i Prokurimit Publik ka marrë në shqyrtim ankesën e Operatorit Ekonomik “Myrto Security” sh.p.k, i cili kërkon skualifikimin e shoqërive "Nazeri 2000" shpk, "Oktapus 1 Security" shpk, "Safe" shpk, "Ballazhi" shpk, "Eurogjici Security" shpk, "Firdeus Security" shpk, "Snajper Security" shpk, "Trezhnjeva" shpk, "Ales" shpk, "Global Security" shpk, "International Security Albania" shpk, "SSX" shpk dhe Oktapus" shpk nga procedura e prokurimit “*Kërkesë për propozim*”, me Nr.Ref-65266-01-17-2017, me objekt: ”Shërbimi i Ruajtjes dhe Sigurisë Fizike i ambienteve të ISHP-së”, me fond limit 4.723.738 lekë pa tvsh, zhvilluar në datë 30.01.2017, nga autoriteti kontraktor Instituti i Shëndetit Publik.

Konkretisht pretendimet e ngritur nga ankimuesi janë si më poshtëcituat:

I. Oferta e operatorit "Toni Security" duhet refuzuar pasi ky operator ka gabuar në llogaritjen e cmimit të ofertes. [...] Gjithashtu ky operator nuk ka llogaritur shpenzimet për armatim e municion, pasi nuk ka arme në pronësi aq sa janë vendrojet (3) sipas percaktimeve në DST. Pra oferta e këtij operatori ekonomik duhet të refuzohet pasi në llogaritjen e cmimit të ofertes nuk ka respektuar elementet ligjore të sipërcituara.

II. Operatoret "Nazeri 2000", "Oktapus 1 Security", "Safe", "Ballazhi", "Eurogjici Security", "Firdeus Security", "Snajper Security", "Trezhnjeva", "Ales", "Global Security", "International Security Albania", "SSX", dhe Oktapus":

1. *Nuk kanë personelin e mjaftueshëm për realizimin e kontratës, vërtetuar kjo me vërtetim me listë emërore të lëshuar nga Drejtoria Vendore e Policisë Tiranë, pasi certifikatat e punonjësve të shërbimit i kanë përtej afatit 4-vjeçar të vlefshmërisë së tyre, sipas përcaktimeve të Shtojcës 6 të DST ("kapaciteti teknik", pika 2.2, si dhe pikës 3 "kapaciteti ligjor");*
2. *Nuk provojnë se kanë paguar detyrimet për faturat e konsumit të energjisë elektrike ndaj OSHEE Sh.a, në objektet që kanë në pronësi ose në përdorim, sipas vendodhjes së ushtrimit të aktivitetit rregjistruar në Qendrën Kombëtare të Biznesit. [...];*
3. *Nuk kanë paraqitur deklaratë për numrin e radiove që kanë në pronësi. (Shtojca 6, ("kapaciteti teknik", pika 2.4);*

Lidhur me pretendimet e mësipërme të ankimesit, Komisioni i Prokurimit Publik ka gjykuar se në ankesën drejtuar pranë K.P.P, operatori ekonomik ankimes "Myrto Security" shpk nuk parashtrohet fakte apo dyshime të bazuara, por ngre pretendime a-priori për operatorët e tjerë ekonomikë të kualifikuar. [...]. Për rrjedhojë pretendimet e ankimesit "Myrto Security" shpk nuk merren shqyrtim.

KONKLUZION

Referuar 2 vendimeve të sipërcituar, në thelb kemi të bëjmë me pretendime të njëjta.

Në rastin e parë, pretendimet ngrihen për shoqëritë "Arb-Security" sh.p.k, "Security Korça" sh.p.k, "Vaso Security" sh.p.k dhe "Eurogjici Security" sh.p.k. (4 shoqëri) ndërsa, në rastin e dytë pretendimet ngrihen për shoqëritë "Nazeri 2000", "Oktapus 1 Security", "Safe", Ballazhi", "Eurogjici Security", "Firdeus Security", "Snajper Security", "Trezjnjeva" "Ales", "Global Security", "International Security Albania", "SSX" dhe Oktapus" sh.p.k. (13 shoqëri).

Në rastin e parë, KPP, i ka marrë në shqyrtim pretendimet e ankimesit, duke shqyrtuar themelin e ankesës ndërsa, në rastin e dytë, po të njëjtat pretendime KPP nuk i ka marrë në shqyrtim, duke i quajtur ato pretendime të ngritura apriori dhe si të pabazuara në prova e fakte dhe, duke

konkluduar se nuk mund të investohej mbi trajtimin e themelit të kësaj ankese.

Pra, Komisioni i Prokurimit Publik, lidhur me përmbajtjen e ankesave dhe pretendimeve të ngritura nga operatorët ekonomikë ankimes, mban dy qëndrime në kundërshtim me njëra tjetrën.

Case IX

Në vendimin **K.P.P. 615/2017**, datë 18.08.2017, Komisioni i Prokurimit Publik ka marrë në shqyrtim ankesën e Bashkimit të Operatorëve Ekonomikë “Curri” sh.p.k & “Be Is” sh.p.k. i cili kundërshton skualifikimin e tij nga procedura e prokurimit “*Procedurë e Hapur*”, me objekt “*Shtesë Ujësjiellësi Valbonë për qytetin Bajram Curri*”, me nr. REF-05821-04-13-2017, me fond limit 67,595,904 lekë (pa TVSH), zhvilluar në datën 22.05.2017, nga autoriteti kontraktor Bashkia Tropojë.

B.O.E ankimes “CURRI” sh.p.k. & “BE-IS” sh.p.k., në datën 14.06.2017 ka paraqitur ankesë pranë autoritetit kontraktor, duke kundërshtuar 5 (pesë) arsye të skualifikimit të tij.

B.O.E ankimes “CURRI” sh.p.k. & “BE-IS” sh.p.k., në datën 23.06.2017 ka paraqitur ankesë pranë Komisionit të Prokurimit Publik, me të njëjtin objekt me ankesën e paraqitur në autoritetin kontraktor.

Nga shqyrtimi i informacionit të dorëzuar prej autoritetit kontraktor si dhe atij të siguruar në SPE, konstatohet se B.O.E ankimes “CURRI” sh.p.k. & “BE-IS” sh.p.k., është skualifikuar nga kjo procedurë prokurimi për 6 (gjashtë) arsye.

Sa më sipër, është konstatuar se B.O.E ankimes “CURRI” sh.p.k. & “BE-IS” sh.p.k. në ankimin e paraqitur pranë autoritetit kontraktor dhe KPP, nuk ka ankime të gjitha arsyet e skualifikimit të tij nga kjo procedurë prokurimi, por ka ngritur pretendime vetëm për pesë prej tyre nga gjashtë të tilla, e rrjedhimisht ankimi i paraqitur prej tij nuk mund të konsiderohet si ezaurim i shkallëve që duhet të ndjekë një ankim administrativ, pasi për

faj të vetë ankimuesit, ankimimi në autoritetin kontraktor dhe KPP nuk është realizuar sipas kritereve të domosdoshme të përcaktuara në ligjin nr. 9643, datë 20.11.2006 “Për prokurimin publik”. Përfundimish, pretendimet e BOE ankimues nuk janë marrë në shqyrtim dhe ankesa e tij nuk është pranuar nga KPP.

- Ankesa pranë KPP është protokolluar në datën 23.06.2017, nr. 1170 prot;
- Vendimi i KPP është marë në datën 18.08.2017 (përtej afatit 20 ditor të përcaktuar me ligj);

Në vendimin **K.P.P. 649/2017**, datë 11.09.2017, Komisioni i Prokurimit Publik ka marrë në shqyrtim ankesën e Bashkimit të Operatorëve Ekonomikë “MANE/S” sh.p.k & “BE-IS” sh.p.k. & “Green Farm” sh.p.k. i cili kundërshton skualifikimin e tij nga procedura e prokurimit “*Procedurë e Hapur*”, me objekt “*Rikonstruksion dhe shtrim i rruges bujqesore te fushes se fshatit Pal*”, me nr. REF-71229-03-09-2017, me fond limit 76,573,764 lekë (pa TVSH), zhvilluar në datën 15.05.2017, nga autoriteti kontraktor Bashkia Sarandë.

Në datën 15.03.2017 BOE ankimues “MANE/S” sh.p.k & “BE-IS” sh.p.k. & “Green Farm” sh.p.k. ka dorëzuar ankesë pranë autoritetit kontraktor duke kundërshtuar kriteret e veçanta të kualifikimit për procedurën e mësipërme të prokurimit.

Në datën 17.03.2017 autoriteti kontraktor me anë të shkresës nr.875/1 prot datë 17.03.2017 i kthen përgjigje palës ankimuese duke mos pranuar ankesën.

Në datën 27.03.2017 BOE ankimues “MANE/S” sh.p.k & “BE-IS” sh.p.k. & “Green Farm” sh.p.k. ka dorëzuar ankesë pranë Komisionit të Prokurimit Publik.

Në datën 21.04.2017 Komisioni Prokurimit Publik me vendimin KPP 244/2017 ka vendosur si më poshtë:

“1.Të pranojë pjesërisht ankesën e operatorit ekonomik “Mane/S” sh.p.k. për procedurën e prokurimit “Procedurë e Hapur” me objekt “Rikonstruksion dhe shtrim i rruges bujqesore te fushes se fshatit Pal” me

nr. Ref 71229-03-09-2017 me fond limit 76,573,764 lekë pa TVSH, parashikuar për t'u zhvilluar në datë 31.03.2017 nga autoriteti kontraktor Bashkia Sarandë.

2. Autoriteti kontraktor të kryejë modifikimet përkatëse në përputhje me arsyetimet dhe konstatimet e mësipërme të Komisionit të Prokurimit Publik.

3. Autoriteti kontraktor, brenda 10 ditëve, të vërë në dijeni Komisionin e Prokurimit Publik për zbatimin e këtij vendimi.

Nga shqyrtimi i dokumentacionit të administruar në dosjen e hetimit administrativ për procedurën e prokurimit të sipërcituar, autoriteti kontraktor nuk ka paraqitur informacion lidhur me zbatimin e vendimit KPP 244/2017 dhe si rrjedhojë, Komisioni i Prokurimit Publik nuk ka vendosur për heqjen e pezullimit për procedurën e sipërcituar.

Në datën 15.05.2017, autoriteti kontraktor ka zhvilluar procedurën e prokurimit.

Në datën 07.06.2017, autoriteti kontraktor ka njoftuar operatorët ekonomikë pjesëmarrës, me anë të sistemit të prokurimeve elektronike (S.P.E.), mbi rezultatet e vlerësimit të Komisionit të Vlerësimit të Ofertave ku rezulton si më poshtë vijon:

i. “MANE/S” sh.p.k. & “BE-IS” sh.p.k. & “Green Farm” sh.p.k.
59,999,999 lekë, skualifikuar;

ii. ”TOTILA” sh.p.k & ”FUSHA” sh.p.k. 74,087,003
lekë, kualifikuar;

Në datën 20.06.2017, B.O.E ankimues “MANE/S” sh.p.k. & “BE-IS” sh.p.k. & “Green Farm” sh.p.k. ka paraqitur ankesë pranë Komisionit të Prokurimit Publik me të njëjtin objekt me ankesën e dorëzuar pranë autoritetit kontraktor.

Në datën 03.07.2017, autoriteti kontraktor me anë të shkresës nr. 2423/1prot., datë 28.06.2017, ka dorëzuar pranë Komisionit të Prokurimit

Publik informacionin e kërkuar në lidhje me procedurën e prokurimit të sipërcituar.

Referuar problematikës së sipërcituar, Komisioni i Prokurimit Publik ka marrë vendim në datën 11.09.2017, duke gjykuar se [...] Në kushtet kur autoriteti kontraktor ka vijuar me procedurën pa respektuar vendimin nr. 244/2017 date 21.04.2017 të KPP-së., Komisioni gjykon se pretendimet e BOE ankimues “MANE/S” sh.p.k. & “BE-IS” sh.p.k. & “Green Farm” sh.p.k. nuk do të merren në shqyrtim pasi procedura e prokurimit duhet të anulohet.

Përfundimish, pretendimet e BOE ankimues nuk janë marrë në shqyrtim dhe KPP ka urdhëruar autoritetin kontraktor të anulojë procedurën në fjalë të prokurimit.

- Ankesa pranë KPP është protokolluar në datën 20.06.2017, nr. 1131 prot;
- Vendimi i KPP është marë në datën 11.09.2017 (përtej afatit 20 ditor të përcaktuar me ligj);

KONKLUZION

Referuar dy vendimeve të sipërcituar duket qartë vendimmarrja e vonuar dhe e tejzgjatur e KPP. Vendimet e mësipërme nuk janë trajtuar në themel duke përberë çështje tepër të thjeshta për tu trajtuar dhe për një vendimmarrje tepër të shpejtë nga ana e Komisionit.

Case X

Në vendimin **K.P.P. 302/2017**, datë 12.05.2017, Komisioni i Prokurimit Publik ka marrë në shqyrtim ankesat e Operatorëve Ekonomikë “Kristalina-KH” sh.p.k. dhe “Adel Co” sh.p.k. të cilët, kërkojnë modifikimin e dokumentave të tenderit lidhur me procedurën e prokurimit “*Kërkesë për propozime*”, me Nr. REF-72232-03-16-2017, me objekt “*Shërbime për printim dhe publikime parlamentare*”, me fond limit 6.153.697 lekë pa tvsh, parashikuar për t’u zhvilluar më datë 28.03.2017, nga autoriteti kontraktor Kuvendi i Shqipërisë.

A.

Operatori ekonomik ankimues “Kristalina-KH” sh.p.k. ndër të tjera kërkon:

- *Te hiqet redaktori dhe korrektori nga listepagesa gusht 2016 e ne vazhdim dhe te vendoset nga muaji aktual dhe deri ne 31.12.2017 gje e cila përcaktohet me kontratë pune si dhe me Formularin e deklarimit të punonjësve pranë Drejtorisë Tatimore sipas Ligjit për Procedurat Tatimore;*

Në Dokumentat e Tenderit, shtojca 6 “Kriteret e vecanta të kualifikimit”, “Kapaciteti teknik”, pika 2 dhe 3, nga ana e autoritetit kontraktor është kërkuar:

2. *Operatori ekonomik të ketë të punësuar jo më pak se 15 (pesëmbëdhjetë) punonjës të siguruar nga muaji Gusht 2016 e në vazhdim, përfshirë këtu redaktorin dhe korrektorin (vërtetim i lëshuar nga Administrata Tatimore shoqëruar me listëpagesat për muajt e mësipërm);*
3. *Operatori ekonomik për korrektorin dhe redaktorin duhet të paraqesë:*
 - *Kontratën e punës, te miratuar nga të dy palët, afati i saj të jetë deri në 31.12 .2017;*
 - *Diplomën e shkollës së lartë;*
 - *Librezën e punës në të cilën vërtetohet se ka eksperiencë pune 2 vjeçare në profesionin e tij;*

Lidhur me pretendimin e mësipërm Komisioni i Prokurimit Publik, nuk e ka pranuar pretendimin e shoqërisë “Kristalina-KH” sh.p.k., duke u shprehur në pikën III.1.4 si më poshtë:

III.1.4 Komisioni i Prokurimit Publik gjykon se kërkesat e autoritetit kontraktor në lidhje me redaktorin dhe korrektorin ndahen në dy momente:

- autoriteti kontraktor njëherë ka përcaktuar kriterin për paraqitjen e listpagesave për të paktën 15 (pesëmbëdhjetë) punonjës të siguruar, përfshirë këtu redaktorin dhe korrektorin për periudhën

kohore nga muaji gusht 2016 e në vazhdim, pra deri në momentin e dorëzimit të ofertave;

- ndërsa në kriterin më poshtë ka përcaktuar se operatori ekonomik për korrektorin dhe redaktorin duhet të paraqesë kontratat e punës, të miratuara nga të dy palët, afati i të cilave të jetë deri në 31.12.2017;

Komisioni i Prokurimit Publik gjykon se kërkesa e parë e autoriteti kontraktor, pra kriteri lidhur me paraqitjen e listpagesave për të paktën 15 (pesëmbëdhjetë) punonjës të siguruar, përfshirë këtu redaktorin dhe korrektorin, për periudhën kohore nga muaji gusht 2016 e në vazhdim, pra deri në momentin e dorëzimit të ofertave, është vendosur për të krijuar një panoramë të përgjithshme lidhur me kapacitetet profesionale që disponojnë operatorët ekonomikë, të cilët, nëpërmjet dokumentacionit të kërkuar duhet të vërtetojnë se zotërojnë personelin e nevojshëm, në funksion të realizimit me sukses të kontratës. KPP gjykon se për AK është e rëndësishme të provohet nga operatori ekonomik, që ky i fundit disponon redaktor dhe korrektor, duke treguar kapacitetet e këtij të fundit në lidhje me personelin, por jo detyrimisht që në listpagesat në fjalë të figurojnë të njëjtat emra që lidhen me këto pozicione gjatë gjithë periudhës të përcaktuar më sipër; pasi në stafin e operatorëve ekonomikë mund të ketë lëvizje të punonjësve.

Përsa i përket kriterit të dytë, pra kriterit lidhur me kërkesën e AK, se operatori ekonomik në lidhje me disponimin e korrektorit dhe redaktorin duhet të paraqesë kontratat e punës, të miratuara nga të dy palët, afati i të cilave duhet të jetë deri në datën 31.12.2017, Komisioni gjykon se ky kriter është vendosur për të siguruar vazhdimësinë e punësimit të dy prej pozicioneve më kyçe në këtë procedurë prokurimi, pra redaktorit dhe korrektorit, por në përputhje me LPP afati i kontratave duhet të jetë i vlefshëm deri në datën e dorëzimit të ofertave.

Komisioni konkludon se dy kriteret e lartpërmedura i referohen dy kërkesave të ndryshme dhe dy momenteve të ndryshme kohore, e për rrjedhojë nuk ka mbivendosje; pra kriteret në fjalë për të dy pozicionet respektive redaktor dhe korrektor, janë në përputhje me volumin dhe përmasat e kontratës, për të garantuar zbatimin me sukses të kontratës.

B.

Operatori ekonomik ankimues “Kristalina-KH” sh.p.k. ndër të tjera kërkon:

- *“Te hiqet Libreza e punës, e cila, të dëshmojë që korrektori dhe redaktori kanë 2 vjet eksperiencë pune në profesionin e tyre. Kjo të vërtetohet me Diplomën e shkollës së lartë dhe me Kontratën e punës”;*

Operatori ekonomik ankimues “Adel – CO” sh.p.k. ndër të tjera kërkon:

- *“modifikimin e kriterit për ofrimin e disa mundësive për operatorët ekonomikë sesi të verifikojnë që kanë në dispozicion një korrektor dhe redaktor (kontratë me kohë të pjeshme, kontrata shërbimi me agjenci apo studio të posaçme që janë të specializuar në fushën e redaktimit dhe të korrektimit),*

Lidhur me pretendimet e mësipërme të operatorëve ekonomikë ankimues, Komisioni i Prokurimit Publik, ka pranuar pretendimin e shoqërisë “Kristalina-KH” sh.p.k. dhe ka pranuar pjesërisht pretendimin e shoqërisë “Adel – CO” sh.p.k., duke u shprehur në pikën III.3.5 si më poshtë:

III.3.5. Komisioni i Prokurimit Publik gjykon se dëshmia nga ana e operatorëve ekonomikë se zotërojnë kapacitetet e duhura profesionale për realizimin me sukses të objektit të prokurimit, në drejtim të eksperiencës së punës të kërkuar, nuk mund të vërtetohet nëpërmjet librezës së punës, sepse kjo e fundit është një dokument që e disponon dhe i shërben tërësisht punëmarrësit. Nga ana tjetër marrëdhënia e punës mund të vërtetohet nëpërmjet kontratës së punës të nënshkruar nga të dyja palët, si dhe nga pagesa e kontributeve shoqërore dhe shëndetsore në referencë të pagës respektive, verifikimi i të cilave mund të bëhet dhe on-line. Komisioni gjykon se nuk ka asnjë formë tjetër me anë të së cilës mund të vërtetohet punësimi i një individi, përveç atyre të përmendura më sipër.

Në vendimin **K.P.P. 699/2017**, datë 20.10.2017, Komisioni i Prokurimit Publik ka marrë në shqyrtim ankesën e Operatorit Ekonomik “Adel Co” sh.p.k. I cili, kërkon modifikimin e dokumentave të tenderit lidhur me procedurën e prokurimit me Nr. REF-26873-09-18-2017 me objekt: *“Shpenzime per Blerje diploma, suplement, dhe mbajttese diplome”*, me fond limit limit 8.000.000 lekë pa TVSH, parashikuar per t’u zhvilluar ne

daten 09.10.2017 nga autoriteti kontraktor Universiteti “Aleksandër Moisiu”, Durrës.”

Në Dokumentat e Tenderit, shtojca 7 “*Kriteret e vecanta të kualifikimit*”, “*Kapaciteti teknik*”, pika 2 dhe 3, rezulton se nga ana e autoritetit kontraktor është kërkuar:

2. *Vërtetim lëshuar nga administrata tatimore për numrin mesatar të punonjësve të siguruar për periudhën Janar 2016 deri në gusht 2017, shoqëruar me listëpagesat e sigurimeve shoqërore (E-Sig 025/a), formularet e deklarimit të pagesës së sigurimeve shoqërore dhe shëndetsore, ku operatori ekonomik duhet të ketë të siguruar mesatarisht njëzet punonjes te siguruar.*
3. *Operatori ekonomik duhet të ketë të punësuar 2 Redaktorë për periudhën kohore Janar 2016 deri në gusht 2017 dhe 1 faqosës/disenjator. Për të përmbushur këtë kriter ofertuesi duhet të dorzojë:*
 - Kontratën e Punës të vlefshme deri në përfundimin e objektit të kontratës;*
 - Diplomën e shkollës së lartë Dega Gjuhë Letërsi (për redaktorët), [...];*
 - Diplomën e shkollës së lartë Dega Pikturë/Grafikë, [...];*
 - Të figurojnë në listëpagesat për periudhën Janar 2016- gusht 2017;*

Operatori ekonomik ankimues “Adel – CO” sh.p.k. pretendon se:

- “*Në lidhje me figurimin në listpagesa të redaktorëve dhe të designerit, [...] (kjo kërkesë) nuk është proporcionale dhe në përputhje me legjislacionin e prokurimit publik dhe kontratën që prokurohet, kërkitimi nga AK që redaktori dhe designeri mund të punësohen edhe me qëllim të posacëm për realizimin e kontratës që prokurohet. Ajo që është e rëndësishme për autoritetin kontraktor dhe që shërben si garanci për realizimin me sukses të kësaj kontrate që prokurohet është kontrata e punës e lidhur me dizenjatorin dhe redaktorin, e cila siguron vazhdimësinë përgjatë gjithë kohëzgjatjes së kontratës.*

Përsa më sipër, ankimuesi ndër të tjera kërkon:

- *“modifikimin e këtij kriteri nga dy redaktorë të bëhet një redaktor dhe ofrimin e disa mundësive për operatorët ekonomikë sesi të verifikojnë që kanë në dispozicion një redaktor dhe designer gjatë gjithë periudhës së zgjatjes së kontratës, dhe heqjen e përcaktimit strikt mbi llojin e diplomës që duhet të ketë redaktori dhe designer ...”;*

Lidhur me pretendimin e mësipërm Komisioni i Prokurimit Publik, e ka pranuar pjesërisht pretendimin e shoqërisë “Adel – CO” sh.p.k., duke u shprehur në pikën III.2.7 si më poshtë:

III.2.7. [...], Komisioni i Prokurimit Publik gjykon se është me vend të ndalet në një test balancues të dy elementëve kryesorë.

- Së pari, nëse kërkesa në fjalë është e përshtatshme për arritjen e synimit të kërkuar dhe
- së dyti, nëse kërkesa në fjalë shkon përtej asaj, se çfarë është e nevojshme për të arritur synimin.
- Gjithashtu, në shqyrtimin e kriterit të mësipërm të kualifikimit, K.P.P. gjykon të ndalet edhe në faktin nëse kriteri i mësipërm është në proporcion me natyrën dhe përmasat e kontratës që do të prokurohet në zbatim të nenit 46 pika 1 të LPP-së.

III.2.8. Komisioni i Prokurimit Publik gjykon se synimi parësor i autoritetit kontraktor është vërtetimi se ofertuesi disponon staf të kualifikuar për realizimin me sukses të kontratës publike objekt prokurimi.

- Në rastin konkret, KPP konstaton se, referuar specifikimeve teknike si më sipër cituar, kërkesa e autoritetit kontraktor në lidhje me numrin e redaktorëve i tejkalon përmasat e kontratës që do të prokurohet.
- Ndërsa përsa i përket figurimit në listpagesa të redaktorëve dhe të designerit për periudhën kohore Janar 2016 deri në gusht 2017, Komisioni i Prokurimit Publik gjykon se kjo kërkesë është vendosur për të krijuar një panoramë të përgjithshme lidhur me kapacitetet profesionale që disponojnë operatorët ekonomikë, të cilët, nëpërmjet dokumentacionit të kërkuar duhet të vërtetojnë se

zotërojnë personelin e nevojshëm, në funksion të realizimit me sukses të kontratës. Për autoritetin kontraktor është e rëndësishme të provohet nga operatori ekonomik, që ky i fundit disponon redaktor dhe designer, duke treguar kapacitetet e këtij të fundit në lidhje me personelin, por jo detyrimisht që në listpagesat në fjalë të figurojnë të njëjtat emra që lidhen me këto pozicione gjatë gjithë periudhës të përcaktuar më sipër; pasi në stafin e operatorëve ekonomikë mund të ketë lëvizje të punonjësve. **Gjithashtu Komisioni i Prokurimit Publik gjykon se periudha e kërkuar në listpagesa është kërkesë e ekzagjeruar** dhe nuk i shërben qëllimit të autoritetit kontraktor për nxitjen e konkurrencës dhe përftimit të ofertës më të mirë dhe më të leverdisshme për kryerjen e shërbimit të kërkuar në dokumentat e procedurës së prokurimit. **Për më tepër që AK duhet të lejojë dhe të përcaktojë edhe alternativa të tjera për përmbushjen e kapacitetit lidhur me personelin kryesor të nevojshëm për të zbatuar kontratën sic janë lista e personelit kryesor, kontratat e punës, CV-të, dëshmitë e kualifikimit etj., duke marrë parasysh që punonjësit mund të kontraktohen për procedurën e prokurimit me profesionistët e nevojshëm për kryerjen e shërbimeve nga momenti i hapjes së procedurës së prokurimit deri në përfundimin e saj.**

- Përsa i përket pretendimit për llojin e diplomës që është kërkuar, Komisioni i Prokurimit Publik gjykon se diplomat specifikojnë fushën e kualifikimit, ndaj edhe kjo kërkesë, përsa i përket profesionit redaktor, është e nevojshme për të garantuar realizimin me sukses të kontratës. Ndërsa kërkesa për faqosësin/designerin i cili duhet të vërtetojë se është diplomuar për Degën Pikturë/Grafikë përmbush synimin e autoritetit kontraktor për staf të kualifikuar edhe me anë të vërtetimit të kualifikimit nëpërmjet dëshmimeve të formimit profesional ose dokumentave ekuivalentë të kualifikimit.

KONKLUZION

Referuar 2 vendimeve të sipërcituar, në thelb kemi të bëjmë me pretendime të njëjta, për më tepër, njëri prej tyre i ngritur nga i njëjti operator ekonomik ankimues.

- Në rastin e pare kemi:

Operatori ekonomik ankimues “Kristalina-KH” sh.p.k. ndër të tjera kërkon:

- *Te hiqet redaktori dhe korrektori nga listepagesa gusht 2016 e ne vazhdim dhe te vendoset nga muaji aktual dhe deri ne 31.12.2017 gje e cila përcaktohet me kontratë pune si dhe me Formularin e deklarimit të punonjësve pranë Drejtorisë Tatimore sipas Ligjit për Procedurat Tatimore;*

Operatori ekonomik ankimues “Adel – CO” sh.p.k. ndër të tjera kërkon:

- *“modifikimin e kriterit për ofrimin e disa mundësive për operatorët ekonomikë sesi të verifikojnë që kanë në dispozicion një korrektor dhe redaktor (kontratë me kohë të pjeshme, kontrata shërbimi me agjenci apo studio të posaçme që janë të specializuar në fushën e redaktimit dhe të korrektimit);*
- Në rastin e dytë kemi:

Operatori ekonomik ankimues “Adel – CO” sh.p.k. ndër të tjera pretendon:

- *“Në lidhje me figurimin në listpagesa të redaktorëve dhe të designerit, [...] (kjo kërkesë) nuk është proporcionale dhe në përputhje me legjislacionin e prokurimit publik dhe kontratën që prokurohet, kërkitimi nga AK që redaktori dhe designeri mund të punësohen edhe me qëllim të posacëm për realizimin e kontratës që prokurohet. Ajo që është e rëndësishme për autoritetin kontraktor dhe që shërben si garanci për realizimin me sukses të kësaj kontrate që prokurohet është kontrata e punës e lidhur me dizenjatorin dhe redaktorin, e cila siguron vazhdimësinë përgjatë gjithë kohëzgjatjes së kontratës.*

Dhe për sa më sipër, kërkon:

“modifikimin e këtij kriteri nga dy redaktorë të bëhet një redaktor dhe ofrimin e disa mundësive për operatorët ekonomikë sesi të verifikojnë që kanë në dispozicion një redaktor dhe designer gjatë gjithë periudhës së zgjatjes së kontratës, dhe heqjen e përcaktimit strikt mbi llojin e diplomës që duhet të ketë redaktori dhe designer”;

Në rastin e parë (kriteri lidhur me paraqitjen e listpagesave për të paktën 15 (pesëmbëdhjetë) punonjës të siguruar, përfshirë këtu redaktorin dhe korrektorin, për periudhën kohore nga muaji gusht 2016 e në vazhdim, pra deri në momentin e dorëzimit të ofertave), Komisioni i Prokurimit Publik ka gjykuar se, për AK është e rëndësishme të provohet nga operatori ekonomik, që ky i fundit disponon redaktor dhe korrektor, duke treguar kapacitetet e këtij të fundit në lidhje me personelin, por jo detyrimisht që në listpagesat në fjalë të figurojnë të njëjtat emra që lidhen me këto pozicione gjatë gjithë periudhës së përcaktuar më sipër pasi, në stafin e operatorëve ekonomikë mund të ketë lëvizje të punonjësve.

- Me gjykimin e mësipër KPP refuzon pretendimin e shoqërisë “Kristalina-KH” sh.p.k., duke krijuar në vetvete një konfuzion në gjykim dhe duke i’u larguar pretendimit të ankimuesit.

Ndërsa, në rastin e dytë (përsa i përket figurimit në listpagesa të redaktorëve dhe të designerit për periudhën kohore Janar 2016 deri në gusht 2017), Komisioni i Prokurimit Publik ka gjykuar se, për AK është e rëndësishme të provohet nga operatori ekonomik, që ky i fundit disponon redaktor dhe designer, duke treguar kapacitetet e këtij të fundit në lidhje me personelin, por jo detyrimisht që në listpagesat në fjalë të figurojnë të njëjtat emra që lidhen me këto pozicione gjatë gjithë periudhës të përcaktuar më sipër, pasi në stafin e operatorëve ekonomikë mund të ketë lëvizje të punonjësve.

Gjithashtu Komisioni i Prokurimit Publik gjykon se periudha e kërkuar në listpagesa është kërkesë e ekzagjeruar [...].

- Me gjykimin e mësipër KPP pranon pretendimin e shoqërisë “Adel – CO” sh.p.k., duke mbajtur një qëndrim të ndryshëm nga ai i rastit të parë, lidhur me pretendimin e ngritur nga shoqëria “Kristalina-KH” sh.p.k.

Akoma më tej, në rastin e parë, lidhur me pretenimin e shoqërisë “Adel – CO” sh.p.k. (për ofrimin e disa mundësive për operatorët ekonomikë sesi të verifikojnë që kanë në dispozicion një korrektor dhe redaktor apo redaktor dhe designer (kontratë me kohë të pjeshme, kontrata shërbimi me agjenci apo studio të posaçme që janë të specializuar në fushën e redaktimit dhe të korrektimit), Komisioni i Prokurimit Publik ka gjykuar se dëshmia nga ana e operatorëve ekonomikë se zotërojnë kapacitetet e duhura profesionale për realizimin me sukses të objektit të prokurimit, në drejtim të eksperiencës së punës të kërkuar, nuk mund të vërtetohet nëpërmjet librezës së punës, sepse kjo e fundit është një dokument që e disponon dhe i shërben tërësisht punëmarrësit. Nga ana tjetër marrëdhënia e punës mund të vërtetohet nëpërmjet kontratës së punës të nënshkruar nga të dyja palët, si dhe nga pagesa e kontributeve shoqërore dhe shëndetsore në referencë të pagës respektive, verifikimi i të cilave mund të bëhet dhe on-line. Komisioni gjykon se nuk ka asnjë formë tjetër me anë të së cilës mund të vërtetohet punësimi i një individi, përveç atyre të përmendura më sipër.

Ndërsa, në rastin e dytë, lidhur me pretenimin e shoqërisë “Adel – CO” sh.p.k. (për ofrimin e disa mundësive për operatorët ekonomikë sesi të verifikojnë që kanë në dispozicion redaktor dhe designer ...), Komisioni i Prokurimit Publik ka gjykuar se “***AK duhet të lejojë dhe të përcaktojë edhe alternativa të tjera për përmbushjen e kapacitetit lidhur me personelin kryesor të nevojshëm për të zbatuar kontratën sic janë lista e personelit kryesor, kontratat e punës, CV-të, dëshmitë e kualifikimit etj., duke marrë parasysh që punonjësit mund të kontraktohen për procedurën e prokurimit me profesionistët e nevojshëm për kryerjen e shërbimeve nga momenti i hapjes së procedurës së prokurimit deri në përfundimin e saj.***”

Referuar dy rasteve të mësipërme KPP, lidhur me të njëjtin pretendim, ka mbajtur dy qëndrime të ndryshme.

- Në rastin e parë refuzon pretendimin e shoqërisë “Adel – CO” sh.p.k., duke u shprehur se marrëdhënia e punës mund të vërtetohet nëpërmjet kontratës së punës të nënshkruar nga të dyja palët, si

dhe nga pagesa e kontributeve shoqërore dhe shëndetsore dhe se nuk ka asnjë formë tjetër me anë të së cilës mund të vërtetohet punësimi i një individi, përveç atyre të përmendura më sipër. Pra, për KPP në këtë rast nuk ka forma të tjera alternative për përmbushjen e kapacitetit lidhur me personelin e nevojshëm të kualifikuar.

- Në rastin e dytë pranon po të njëjtin pretendim të ngritur po prej shoqërisë “Adel – CO” sh.p.k., duke u shprehur se AK duhet të lejojë dhe të përcaktojë edhe alternativa të tjera për përmbushjen e kapacitetit lidhur me personelin kryesor [...], duke marrë parasysh që punonjësit mund të kontraktohen për procedurën e prokurimit me profesionistët e nevojshëm për kryerjen e shërbimeve nga momenti i hapjes së procedurës së prokurimit deri në përfundimin e saj.

Pra, Komisioni i Prokurimit Publik, lidhur me përmbajtjen e ankesave dhe pretendimeve të ngritura nga operatorët ekonomikë ankimes në secilin prej dy vendimeve, mban dy qëndrime në kundërshtim me njëra tjetrën.

Case XI

Në vendimin **K.P.P. 25/2017**, datë 26.01.2017, Komisioni i Prokurimit Publik ka marrë në shqyrtim ankesën e Bashkimit të Operatorëve Ekonomikë “Alko Impex General Construction” dshh & “Rej” sh.p.k. i cili, kundërshton skualifikimin e tij nga procedura e prokurimit “*Procedurë e Hapur*” me Nr. REF-54499-10-23-2016 me objekt: “*Sistemim asfaltim rruga kryqëzimi i rrugës Korçë-Bilisht (fshati Kuç)-Fshati Orman*”, me fond limit 152,841,899 lekë pa TVSH e zhvilluar në datën 21.11.2016 , nga autoriteti kontraktor, Bashkia Maliq.

Në datën 22.12.2016, bashkimi i operatorëve ekonomikë “Alko Impex General Construction” d.sh.h & “Rej” sh.p.k ka paraqitur ankesë pranë autoritetit kontraktor me anë të së cilës kundërshton skualifikimin e ofertës së tij;

Në datën 06.01.2017, bashkimi i operatorëve ekonomikë ankimues “Alko Impex General Construction” d.sh.h & “Rej” sh.p.k, ka dorëzuar ankesë pranë Komisionit të Prokurimit Publik;

Lidhur me pretendimin e bashkimit të operatorëve ekonomikë ankimues “Alko Impex General Construction” d.sh.h & “Rej” sh.p.k për kundërshtimin e skualifikimit të ofertës së tyre me arsyetimin se *“Inxhinierët e ndërtimit, inxhinieri i mjedisit, inxhinieri mekanik të përfshirë në licencën e shoqërisë “REJ” sh.p.k. nuk janë në listëpagesat për të gjithë periudhën e kërkuar Janar 2016- Shtator 2016”*, Komisioni i Prokurimit Publik, referuar dokumentacionit provues të dorëzuar nga ankimuesi në përmbushje të këtij kriteri, (*Licencën e shoqërisë, listëpagesat për periudhën e kërkuar si dhe kontratat e punës*) ka konstatuar se disa prej inxhinierave të cilët janë në cilësinë e drejtuesit teknik të shoqërisë të pasqyruar në licencë nuk rezultojnë në listëpagesa për të gjithë periudhën e kërkuar (viti 2016) pasi janë kontraktuar nga shoqëria Rej sh.p.k në Qershor 2016 (Inxhinieri i Ndërtimit, Inxhinieri Elektronik, Inxhinieri Mekanik), në Mars 2016 (Inxhinieri i Mjedisit) dhe disa të tjerë në Korrik 2016, në kundërshtim me kriterin e vecantë të kualifikimit. Rrjedhimisht, dokumentacioni i paraqitur nga operatori ekonomik “Rej” sh.p.k. në këtë procedurë prokurimi, nuk plotëson kërkesat e autoritetit kontraktor dhe nuk mund të konsiderohet i vlefshëm.

Në vendimin **K.P.P. 35/2017**, datë 31.01.2017, Komisioni i Prokurimit Publik ka marrë në shqyrtim ankesën e Operatorit Ekonomik “Rej” sh.p.k. i cili, kundërshton skualifikimin e tij nga procedura e prokurimit *“Procedurë e Hapur”*, me nr. REF-55351-10-26-2016, me objekt *“Rikonstruktion i veprave ujitëse në zonën jugperëndimore të Fushës së Korçës”*, me fond limit limit 12.499.990 lekë (pa TVSH), zhvilluar në datën 21.11.2016, nga autoriteti kontraktor, Bashkia Korçë.

Në datën 20.12.2016 operatori ekonomik ankimues ka paraqitur ankesë pranë autoritetit kontraktor, duke kundërshtuar skualifikimin e tij;

Në datën 29.12.2016 operatori ekonomik ankimues ka paraqitur ankesë në Komisionin e Prokurimit Publik, duke ngritur të njëjtat pretendime si edhe në ankesën e paraqitur pranë autoritetit kontraktor;

Operatorit Ekonomik “Rej” sh.p.k., është skualifikuar nga procedura në fjalë e prokurimit për arsyen se:

“Nuk plotëson kriterin për stafin teknik të përcaktuar në dokumentet e tenderit, shtojca 10, kapaciteti teknik, pika 3.b për arsye se në listëpagesat e paraqitura mungon ing. i mjedisit për muajt janar 2016 dhe shkurt 2016.”

Komisioni i Prokurimit Publik, ka gjykuar se, operatori ekonomik ankimues për gjithë periudhën kohore të kërkuar në dokumentat e tenderit, ka pasur të punësuar pranë tij punonjës me profesion inxhinier mjedisi. Fakti se, në listëpagesat e shoqërisë “Rej” sh.p.k. mungon inxhinierja e mjedisit për muajt janar dhe shkurt 2016, nuk mund të penalizojë këtë operator ekonomik, ndërkohë që kjo mungesë ka ardhur për efekt të punësimit të inxhinieres pranë organizatave të pjesëmarrësve, shkak ky i justifikuar dhe i lejuar nga Kodi i Punës, periudhë për të cilën nuk mund të paguhet nga shoqëria përkatëse, pasi paguhet nga organizata ku merr pjesë. Operatori ekonomik ankimues, tregon se, ka të punësuar në vazhdimësi pranë saj një punonjës me profesion inxhinier mjedisi, i cili është edhe drejtues teknik i shoqërisë, për një periudhë prej më shumë se dy vjetësh (referuar kontratës së punës së punonjësës R.P.).

KONKLUZION

Referuar 2 vendimeve të sipërcituar, në thelb kemi të bëjmë me pretendime të njëjta, ankimuar nga i njëjti operator ekonomik, lidhur me skualifikimin e tij.

Në rastin e parë:

- Ankesa në AK është dorëzuar në datën 22.12.2016;
- Ankesa në KPP është dorëzuar në datën 06.01.2017;
- Vendimi i KPP është marrë në datën 26.01.2017;

Në rastin e dytë:

- Ankesa në AK është dorëzuar në datën 20.12.2016;
- Ankesa në KPP është dorëzuar në datën 29.12.2016;
- Vendimi i KPP është marrë në datën 31.01.2017;

Në të dy rastet konstatohet se arsyeja e skualifikimit lidhet me kapacitetin teknik e profesional të shoqërisë “Rej” sh.p.k. e konkretisht, inxhinieri i Mjedisit, në cilësinë e drejtuesit teknik të shoqërisë i pasqyruar në licencë nuk rezulton në listpagesa për të gjithë periudhën e kërkuar (Janar – Shtator/Tetor 2016). Ky inxhinier nuk rezulton në listëpagesat e muajit Janar dhe Shkurt të kësaj shoqërie, pra rezulton i kontraktuar nga kjo shoqëri në muajin Mars 2016.

Në rastin e parë, ku ankesa në KPP është protokolluar në datën 06.01.2017 dhe vendimi nga KPP është marrë në datën 26.01.2017 arsyeja e skualifikimit të shoqërisë “Rej” sh.p.k. qëndron dhe për Komisionin ing. i Mjedisit është kontraktuar nga kjo shoqëri në muajin Mars 2016;

Në rastin e dytë, ku ankesa në KPP është protokolluar në datën 29.12.2016 dhe vendimi nga KPP është marrë në datën 31.01.2017 arsyeja e skualifikimit të shoqërisë “Rej” sh.p.k. nuk qëndron dhe për Komisionin ing. i Mjedisit e plotëson kriterin e përcaktuar nga AK në Dokumentat e Tenderit.

Në rasin e parë, ankesa në KPP është dorëzuar në datën 06.01.2017 pra, më vonë se ankesa në rastin e dytë (29.12.2016), ndërsa vendimi për rastin e parë është marrë më shpejtë se për rastin e dytë.

Pra, Komisioni i Prokurimit Publik, lidhur me arsyen e skualifikimit të shoqërisë “Rej” sh.p.k., në secilin prej dy vendimeve, se inxhinieri i Mjedisit, në cilësinë e drejtuesit teknik të shoqërisë i pasqyruar në licencë nuk rezulton në listpagesa për të gjithë periudhën e kërkuar (Janar – Shtator/Tetor 2016), mban dy qëndrime në kundërshtim me njëra tjetrën.

Case XII

Në vendimin **K.P.P. 557/2015**, datë 25.08.2015, Komisioni i Prokurimit Publik ka marrë në shqyrtim ankesën e Operatorit Ekonomik “Nika” sh.p.k. i cili, kundërshton skualifikimin e tij nga procedura e prokurimit “*Procedurë e hapur*” me objekt: “*Ndërtim magazine me konstrukcion metalik në n/stacionin Rrashbull*”, me fond limit 21.376.549 lekë (pa

TVSH), zhvilluar në datën 06.07.2015, nga autoriteti kontraktor, Operatori i Sistemit të Transmetimit sh.a.

Operatori ekonomik “Nika” sh.p.k është skualifikuar nga procedura e mësipërme me arsyen se:

Nuk ka përmbushur pikën 2.3/c, kapaciteti teknik i kriterëve të veçanta të kualifikimit në DT që thotë “Operatori ekonomik ofertues duhet të ketë të punësuar të paktën 1 (një) inxhinier ndërtimi, 1 (një) inxhinier mekanik dhe 1 (një) inxhinier elektrik, të cilët, duhet të jenë të licencuar. Inxhinierët e mësipërm duhet të jenë të siguruar, pra të figurojnë në listëpagesat përkatëse E-Sig për periudhën, Janar-Dhjetor 2014 dhe Janar-Maj 2015” sepse inxhinierët mekanik dhe ai elektrik figurojnë në listëpagesat e OE vetëm për periudhën Prill-Maj 2015.

Nga verifikimi i ofertës së operatorit ekonomik “Nika” sh.p.k rezulton se në listpagesat e periudhës Janar 2014 – Maj 2015 ky subjekt ka të siguruar Ing. Ndërtimi personin me inicialet G.M, Ing. Elektik personin me inicialet Z.L dhe Ing. Mekanik personin me inicialet A.J.

Gjithashtu rezulton se për periudhën Prill – Maj 2015 ka të siguruar edhe Ing. Elektrik me inicialet M.T dhe Ing. Mekanik me inicialet A.T.

Këta dy të fundit figurojnë në licencën e shoqërisë “Nika” sh.p.k, regjistruar në Regjistrin themeltar që nga data 06.05.2015 dhe për të cilët janë paraqitur:

1. Kontrata individuale e punës.
2. Diplomat përkatëse.
3. CV-të, referenca pune
4. Libreza e punës, për ing.elektrik.

Për Ing. Elektik personin me inicialet Z.L dhe Ing. Mekanik personin me inicialet A.J, të cilët figurojnë në listpagesat e shoqërisë për periudhën Janar 2014 – Maj 2015, nuk janë paraqitur kontratat individuale të punës dhe diplomat përkatëse.

Rreferuar sa më sipër, Komisioni i Prokurimit Publik ka gjykuar se operatori ekonomik “Nika” sh.p.k. nuk plotëson kërkesën e mësipërme të autoritetit kontraktor, pasi për inxhinierët elektrik dhe mekanik që

figurojnë në listpagesat e periudhës Janar 2014 – Mars 2015 (edhe Prill-Maj 2015) nuk është paraqitur dokumentacioni i kërkuar në dokumentat e tenderit.

Në vendimin **K.P.P. 340/2016**, datë 17.05.2016, Komisioni i Prokurimit Publik ka marrë në shqyrtim ankesën e Operatorit Ekonomik “Nika” sh.p.k. i cili, kundërshton skualifikimin e tij nga procedura e prokurimit “*Procedurë e Hapur*”, me nr. *REF-24059-02-15-2016*, me objekt “*Rikonstruktion i zyrave OSHEE Rajoni Fier*”, me fond limit 19.350.120 lekë (pa TVSH), zhvilluar në datën 10.03.2016, nga autoriteti kontraktor, OSHEE-sha/Drejtoria Rajonale Fier”.

Operatori ekonomik “Nika” sh.p.k është skualifikuar nga procedura e mësipërme me arsyen se:

“Ing.Elektrik nuk figuron në listëpagesa për periudhën e kërkuar në dst.”

Nga shqyrtimi i dokumentacionit të operatorit ekonomik ankimues rezulton se janë paraqitur dokumentet si më poshtë:

Licencë e shoqërisë “Nika” sh.p.k., me nr. NZ. 2798/14, ku evidentohet se ndërmjet të tjerëve është drejtues teknik edhe punonjësja M.T.;

Kontratë pune e lidhur në datën 02.03.2016, ndërmjet shoqërisë “Nika” sh.p.k. dhe ing. Elektrik M.T., me afat për një periudhë kohe të pacaktuar; Diploma, CV, librezë e punës; të punjonjësës M.T.;

Listëpagesat e kontributeve të sigurimeve shoqërore e shëndetësore për periudhën Janar – Dhjetor 2015.

Nga listëpagesat e paraqitura nga operatori ekonomik ankimues rezulton se z. Z.L. ka mbajtur në këtë shoqëri profesionin e inxhinierit elektrik, e përcaktuar kjo me kodin përkatës 2142.01 në listëpagesë, i konvertuar në profesion sipas VKM nr. 627, datë 11.06.2009, është inxhinier elektrik, profesion që referuar kodit e ka kryer për periudhën Prill – Dhjetor 2015 z. M.T. (e cila ka të njëjtin kod 2142.01 me z. Z.L.).

Pra, sa më sipër analizuar rezulton se shoqëria “Nika” sh.p.k. për gjithë periudhën kohore të përcaktuar nga autoriteti kontraktor në dokumentat e tenderit, ka pasur të punësuar pranë saj punonjës me profesion inxhinier elektrik, pavarësisht se për muajt Janar – Prill 2015 nuk e ka vërtetuar këtë

fakt me kontratë pune, CV, e diplomë, pasi ky punonjës nuk është më pjesë e shoqërisë dhe ky dokumentacion është i pamundur për t'u paraqitur, por që referuar listëpagesave vërtetohet më së miri që kjo shoqëri ka pasur të punësuar në strukturat e saj një punonjës me profesion inxhinier elektrik, aq më tepër kur me dokumentacion është vërtetuar për një periudhë më të vonshme (Prill – Dhjetor 2015) që është më e afërt me datën e zhvillimit të procedurës së prokurimit, duke treguar dhe vërtetuar zotërimin e kapacitetit për inxhinierin elektrik.

KONKLUZION

Pra, në secilin prej dy vendimeve të mësipërme Komisioni i Prokurimit Publik, lidhur me arsyen e skualifikimit të shoqërisë “Nika” sh.p.k., se inxhinieri Elektrik nuk rezulton në listpagesa për të gjithë periudhën e kërkuar, mban dy qëndrime në kundërshtim me njëra tjetrën.

1.2 Questionnaire – Economic Operator²⁹

Të nderuar Operatorë Ekonomikë,

Faleminderit që pranuat të merrni pjesë në këtë pyetësor që synon të masë performancën e **Sistemit të Shqyrtimit të Ankesave** në fushën e Prokurimeve Publike në Shqipëri, me fokus **vendimarrjen e Komisionit të Prokurimit Publik (KPP)**. Ky pyetësor bazohet në eksperiencat e Operatorëve Ekonomikë që kanë paraqitur ankesa pranë këtij Institucioni.

Pyetësori do të shërbejë si metodë e mbledhjes së të dhënave për projektin kërkimor për marrjen e gradës Doktor i Shkencave të doktorantes Ketrina Çabiri.

Eksperiencia juaj në fushën e Sistemit të Shqyrtimit të Ankesave është shumë e rëndësishme për të evidentuar problematikat në vendimarrjen e KPP, me qëllim identifikimin e rasteve kur vendimarrja e këtij Institucioni çënon të drejtat e Operatorëve Ekonomikë.

Plotësimi i pyetësorit zgjat 4-5 minuta. Ju lutem vini re se përgjigjet tuaja janë konfidenciale dhe anonim. Në fund ju vendosni nëse pranoi të identifikoheni nga studiuesi, për arsye të mëtejshme studimi.

Faleminderit për kohën dhe bashkëpunimin!

Pyetjet

1.1 Gjatë eksperiencës suaj si palë në procedurën e paraqitur për shqyrtim (palë ankimese ose pjesëmarrëse në procedurë), a mund të identifikoni raste ku ju e vlerësoni vendimarrjen e KPP si **jo të drejtë**.

Me ‘vendimarrje jo të drejtë’ kuptojmë rastet kur:

- *Vendimarrja e KPP është në kundërshtim me legjislacionin dhe rregullat e prokurimit publik;*
- *KPP ka dhënë gjykime të ndryshme për raste të njëjta ankesash;*

²⁹ Published in the original language

1.2 A mund të citoni numrin e vendimit(eve) të KPP të cilit ju i referoheni?

2.1 A mund të identifikoni raste që ju jeni në dijeni për vendimarrje jo të drejtë nga ana e KPP, edhe pse firma juaj NUK ka qënë pjesëmarrëse në procedurë.

2.2 A mund të citoni numrin e vendimit(eve) të KPP të cilit ju i referoheni ose emrin e Operatorit(ëve) Ekonomik të cënuar nga vendimarrja e KPP?

3.1 Nëse në eksperiencën tuaj keni pasur raste ku NUK keni rënë dakort me vendimin e KPP, a i jeni drejtuar Gjykatës për të ankimuar vendimin e këtij Institucioni?

Po ☐

Jo ☐

3.2 Nëse Jo, cilat kanë qënë arsyet që nuk e keni ankimuar çështjen në Gjykatë?

3.3 Nëse Po (e keni ankimuar çështjen), vendimi i Gjykatës e ka hedhur poshtë vendimin e KPP?

Po ☐

Jo ☐

Gjatë përpunimit të të dhënave të këtij pyetësi, mund të lindë nevoja për detaje shtesë lidhur me informacionin e dhënë prej jush. Për këtë qëllim, ju mund të zgjidhni të vini në dispozicion kontaktet tuaja, për të ndihmuar më tej studimin.

Dëshiroj të identifikohem ☐

Emri i Kompanisë

Adresa e-mail:

Tel:

Nuk dëshiroj të identifikohem ☐

1.3 Interviews (semi-formal and informal)

Interviews					
Type of Experts		Institution	Role	Name	Date of Interview
National staff	Private	Economic Operator	EO 1	NA	Dec-15
			EO 2	NA	Jan-16
			Intermediate	NA	Oct-16
	Public	Member of PPC	Former member of PPC	NA	Nov-16
		Representative of Contracting Authority	Former representative of CA	NA	Jan-17
International staff	procurement /corruption	Transparency International, London, University of Cambridge	Senior Advisor	Mihály Fazekas	May-16
		State Commission for the Supervision of Public Procurement Procedures; Croatian Post Inc., Independent Consultant	Senior Adviser public procurement	Zoran Blažević	Dec-15
		Senior Adviser OECD/SIGMA	Senior Adviser	Lech Marcinkowski	Feb-17

1.4 Members of the PPC (2010-2016)

PPC Staff 2010-2016				
Name/Surname	Capacity	Starting the duty	Appoint Decision	End of Duty
Gentian Këri	Head	03-Dec-14	VKM nr. 828, datë 3.12.2014	21 months
Leonard Gremshi	member	03-Dec-14	VKM nr. 828, datë 3.12.2014	Ongoing
Spiro Kuro	Vice Head	26-Nov-14	VKM nr. 801, datë 26.11.2014	21 months
Juliana Hoxha	member	26-Nov-14	VKM nr. 801, datë 26.11.2014	21 months
Hektor Balluku	member	11-Feb-15	VKM nr. 121, datë 11.2.2015	Ongoing
Denar Biba	Head	04-Oct-13	VKM nr. 874, datë 4.10.2013	14 months
Muharrem Çakaj	member	14-Dec-13	VKM nr. 1059, datë 14.12.2013	12 months
Hektor Muçaj member	member	14-Dec-13	VKM nr. 1059, datë 14.12.2013	12 months
Vilma Kadesha	member	23-Jan-13	VKM nr. 41, datë 23.1.2013	23 months
Denis Martopullo	member	23-Jan-13	VKM nr. 41, datë 23.1.2013	23 months
Lealba Pelinku	Head	23-Jan-13	VKM nr. 41, datë 23.1.2013	23 months
Vilma Kadesha	member	23-Jan-13	VKM nr. 41, datë 23.1.2013	23 months
Denis Martopulla	member	23-Jan-13	VKM nr. 41, datë 23.1.2013	31 months
Besa Ombashi	member	14-Apr-11	VKM nr. 302, datë 14.4.2011	10 months
Edi Spaho	Head	10-Mar-10	VKM nr. 160, datë 10.3.2010	34 months
Engjëll Likmeta	Vice Head	10-Mar-10	VKM nr. 160, datë 10.3.2010	34 months
Elton Lula	member	10-Mar-10	VKM nr. 160, datë 10.3.2010	34 months
Klodi Beja	member	10-Mar-10	VKM nr. 160, datë 10.3.2010	34 months
Lealba Pelinku	member	10-Mar-10	VKM nr. 160, datë 10.3.2010	11 months

Bibliography

Alchian, E. (2012). Key concepts in organization theory, 1–6.

Bendor, J. and Moe, T. (1985). An Adaptive Model of Bureaucratic Politics. *The American Political Science Review*, Vol.79, 755-774.

Bennett, A. and Elman, C. (2006a) ‘Qualitative Research: Recent Developments in Case Study Methods’, *Annual Review of Political Science*, 9, 455-476

Beth, É (2005). “Main Findings of the Forum Workshop on Improving Transparency in Public Procurement”. *Chapter 5 in Fighting Corruption and Promoting Integrity in Public Procurement*. OECD Publishing: Paris, 45-50.

Bolton, P. and Dewatripont, M. (2004). Contract Theory. Cambridge, MA, MIT Press.

Bryan, D. J., Graeme, B., & Workman, S. (2006). Behavioral Rationality and the Policy

Burguet, R & Che, Y. (2004). Competitive Procurement with Corruption, 35 RAND J. Econ.50, 51.

Calvert, R., McCubbins, M. D., & Weingast, B. R. (1989). A theory of political control and agency discretion. *American journal of political science*, 33(3).

Carlsson, L., & Åström, K. (2008). Court Decisions in Public Procurement: Delineating the Grey Zone. *Scandinavian Studies in Law*, 53, 407-420.

Carpenter, D. P. (2008). Why Do Bureaucrats Delay? Lessons from a Stochastic Optimal Stopping Model of Agency Timing, with Applications to the FDA, *Public Administration Review*, volume 68, issue 6.

Cepiku, D. (2004). Coping with corruption in Albanian public administration and business. In *Strategies for Public Management Reform* (pp. 285-323). Emerald Group Publishing Limite

Coleman, James S. (1990). *Foundations of Social Theory*, Cambridge (MA), The Belknap Press of Harvard University Press Cukierman.

Dees, J. G. (1992). Principals, Agents, and Ethics, in N. E. Bowie and R. E. Freeman (Eds.), *Ethics and Agency Theory*, New York: Oxford University Press, pp. 25-58.

Downs, A. (1967). *Inside Bureaucracy*. Boston: Little, Brown. Eisner.

Eisenhardt, K. (1989). Agency theory: An assessment and review. *Academy of Management Review*, 14: 57–74.

Eisenhardt, K. M. (2013). Control: Organizational and Economic Approaches *, 31(2), 134-149.

Enns-Jedenastik, L. (2015). The Politicization of Regulatory Agencies: Between Partisan Influence and Formal Independence. *Journal of Public Administration Research and Theory*, Retrieved from muv022. <http://doi.org/10.1093/jopart/muv022>

Fazekas, M., & Tóth, I. J. (2014). New ways to measure institutionalised grand corruption in public procurement.

Fite, D. (1988). *The Defense Procurement Bribery and Fraud Investigation: A Chronology from Press Reports*. Washington, D.C.: Congressional Research Service.

Friedman, M. (1953). *The Methodology of Positive Economics*. In Milton Friedman, *Essays in Positive Economics*. Chicago: The University of Chicago.

Gilardi, F. (2001, September). Principal-agent models go to Europe: Independent regulatory agencies as ultimate step of delegation. In *ECPR General Conference, Canterbury (UK)* (pp. 6-8).

Haruta, C., Radu, B., & Liviu, R. A. D. U. (2009). The Ruling Political Class? A Theoretical Analysis of the Political Actors' Role as Major Decision Makers in the Context of the Politico-administrative Relations. *Transylvanian Review of Administrative Sciences*, 5(27), 71-88.

Huber, J. D. (2000). Delegation to Civil Servants in Parliamentary Democracies, *European Journal of Political Research*, 37(3), pp. 397-413.

Huber, J. D. and Lupia, A. (2001). Cabinet Instability and Delegation in Parliamentary Democracies. *American Journal of Political Science*, 37(3), pp. 18-33.

Huber, J. D., Shipan Ch. R., and Pfahler. M. (2001). Legislatures and Statutory Control of Bureaucracy. *American Journal of Political Science*, 45(2), pp. 330-345 Jacobs.

Jensen, MC., and Meckling, WH. (1976). Theory of the firm: Managerial behavior, agency costs, and ownership structure. *Journal of Financial Economics*, 3: 305–360.

Jeppesen, R. (2010). "Accountability in Public Procurement - transparency and the role of civil society", United Nations Procurement Capacity Development Centre September 2010. [Online] Available: www.unpcdc.org

Jones, B. D. (2001). Politics and the Architecture of Choice: Bounded Rationality and Governance. Chicago: The University of Chicago Press.

Katzmann, R. A. (1990). Comments on Levine and Forrence, "Regulatory Capture, Public Interest, and the Public Agenda: Toward a Synthesis". *Journal of Law, Economics, & Organization*, 6, 199–202. Retrieved from <http://www.jstor.org/stable/764988>

Kiewiet, D. R. and McCubbins, D. M. (1991). The Logic of Delegation. Congressional Parties and the Appropriation Process, Chicago, The University of Chicago Press.

Knott, J.H. and Miller, G.J. (2008). When Ambition Checks Ambition. Bureaucratic Trustees and the Separation of Powers. *The American Review of Public Administration*, vol. 38, no. 4, pp. 387-411.

Kolstad, I., & Wiig, A. (2009). Is transparency the key to reducing corruption in resource-rich countries? *World development*, 37(3), 521-532.

Lambsdorff, J. (2001). *How corruption in government affects public welfare: A review of theory* (No. 9). CeGE Discussion Paper.

Levi, M. (1997). A model, a method, and a map: Rational choice in comparative and historical analysis. *Comparative politics: Rationality, culture, and structure*, 28, 78.

Levine, M and Forrence, J. L. (1990). Regulatory Capture, Public Interest, and the Public Agenda: Toward a Synthesis, *Journal of Law, Economics and Organization*, 6, 167-98.

Macey, J. R. (2015). Organizational Design and Political Control of Administrative Agencies, 8(1), 93–110.

Macmillan, J. H., & Schumacher, S. (1993). Introduction to research in education.

Maggetti, M. (2007). De facto independence after delegation: A fuzzy-set analysis. *Regulation & Governance* 1:271–294.

McCubbins, M. D., Noll, R. G., & Weingast, B. R. (1987). Administrative procedures as instruments of political control. *Journal of Law, Economics, and Organization*, 3:243—Tr.

McCubbins, M. D., Noll, R. G., & Weingast, B. R. (1989). Structure and Process, Politics and Policy: Administrative Arrangements and the Political Control of Agencies. *Virginia Law Review*, 75(2), 431–482. Retrieved from <http://doi.org/10.2307/1073179>

Meier, K. J., & Krause, G. (2003). The scientific study of bureaucracy: An overview. *Politics, Policy, and Organizations: Frontiers in the Scientific Study of Bureaucracy*, 1–19. Retrieved from <http://www.pitt.edu/~gkrause/0472113178-ch1.pdf>

Meier, K., O'Toole, L., & Bohte, J. (2006). Inside the bureaucracy: Principals, agents, and bureaucratic strategy. *Bureaucracy in a democratic state*, ed. K. Meier and L. O'Toole, 93-120.

Milgrom, P and, Roberts, J. (1992). Economics, Organization and Management, Englewood Cliffs, Prentice-Hall Mitchell, Kreps.

Miller, G. J., & Whitford, A. B. (2007). The principal's moral hazard: Constraints on the use of incentives in hierarchy. *Journal of Public Administration Research and Theory*, 17(2), 213–233. Retrieved from <http://doi.org/10.1093/jopart/mul004>

Mitnick, B. M. (1975). The theory of agency. *Public Choice*, 24(1), 27-42.

Mitnick, B. M. (1984). Agency problems and political institutions. Available at SSRN 2338579.

Moe, T. M. (1987). An assessment of the positive theory of 'congressional dominance'. *Legislative Studies Quarterly*, 475-520.

Moe, T. M., & Caldwell, M. (1994). The institutional foundations of democratic government: A comparison of presidential and parliamentary systems. *Journal of Institutional and Theoretical Economics (JITE)/Zeitschrift für die gesamte Staatswissenschaft*, 171-195.

Mueller, D.C. (1990). *Public Choice II*. Cambridge University Press, Cambridge.

Monse E, G. M. Transparency in government procurement: the benefits of efficient governance and orientations for achieving it.

Mutonyi, John Parmenas. *Approaches to the control of corruption in the public procurement system in Kenya: an institutional analysis*. Diss. Social sciences, 2003

Niskanen, W (1971). *Bureaucracy and Representative Government*. Chicago: Aldine-Atherton.

Ostrom, E. (1999a). Coping with Tragedies of the Commons. Nelson Polsby, ed., *Annual Review of Political Science* 2. Palo Alto, CA: Annual Reviews.

Ostrom, E. (1999b). Institutional Rational Choice: An Assessment of the Institutional Analysis and Development Framework. In *Theories of the Policy Process*, Paul A. Sabatier, ed. Boulder, CO: Westview.

Ouchi, W. (1979, September). A Conceptual Framework for the Design of Organization Control Mechanisms, *Management Sci.*, 25, 833-848.

Pires, V., & Guimaraes, A. S. (2015). Social control of public expenditures in a multilevel principal-agent approach. *Revista de Economia Política*, 35(4), 878-894.

Pratt, J. W. and Zeckhauser, R. J. (1985), Principals and Agents: An Overview. In Pratt, John W. and Richard J. Zeckhauser (eds.), *Principals and Agents: The Structure of Business*, Boston, Harvard Business School Press, pp. 1-35.

Rauch, J. and Evans, P. (2000). Bureaucratic structures and bureaucratic performance in less developed countries. *Journal of Public Economics*, Vol. 75, 49-71.

Rawlins, B. R. (2008). Measuring the relationship between organizational transparency and employee trust.

Ross, S. (1973). The Economic Theory of Agency: The Principal's Problem. *American Econom. Rev.*, 63, 134-13.

Rouban, L. (2003). Politicization of the civil service. In *Handbook of public administration*, ed. B. Guy Peters and Jon Pierre, 310–320. London: Sage.

Schooner, S. L. (2002). Desiderata: Objectives for a System of Government Contract Law.

Shapiro, S. and Guston, D. (2009). Procedural Control of the Bureaucracy. Peer Review, and Epistemic Drift. *Journal of Public Administration Research and Theory*, vol. 17, no. 4, pp. 535-551.

Sharon, H. (2007). Reverse Monitoring: On the Hidden Role of Employee Stock-Based Compensation, *105 Mich. L. Rev.* 1421, 1438–39.

Simon, H. (1997). Administrative Behavior. A Study of Decision-Making Processes in Administrative Organizations, New York: The Free Press.

Smith, R. W., & Bertozzi, M. (1998). Principals and agents: An explanatory model for public budgeting. *Journal of Public Budgeting, Accounting & Financial Management*, 10(3), 325–353.

Soudry, O. (2007). A Principal-Agent Analysis of Accountability in Public Procurement, in *Advancing Public Procurement: Practices, Innovation and Knowledge* 432, 435.

Søreide, T. (2014). *Drivers of corruption: A brief review*. World Bank Publications.

Smith, Bertozzi, 1998:

Spence, D. (1997). Agency Policy Making and Political Control: Modeling Away the Delegation Problem. *Journal of Public Administration Research and Theory*, vol. 7, no. 2, pp. 199-219.

Stiglitz, J. (1987). Principal and Agent. Eatwell, John, Murray Milgate and Peter Newman (eds.), *The New Palgrave: A Dictionary of Economics*, Vol. 3, London, Macmillan, pp. 966-97.

Strøm, K. (2000). Delegation and Accountability in Parliamentary Democracies. *European Journal of Political Research*, 37(3), pp. 261-289.

Søreide, T. (2014). *Drivers of corruption: A brief review*. World Bank Publications.

Waterman, R. W., & Meier, K. J. (1998). Principal-agent models: an expansion? *Journal of public administration research and theory*, 8(2), 173-202.

Whitford, A. B., Miller, G. J., & Bottom, W. P. (2008). Negotiated Compliance: Social Solutions to the “Principal’ s Problem”

Yin, R. K. (2013). *Case study research: Design and methods*. Sage publications

Yukins, C. R. (2010). A Versatile Prism: Assessing Procurement Law Through the Principal-Agent Model. *Public Contract Law Journal*, 40, 63–86.

Rose-Ackerman, S. (2005). The challenge of poor governance and corruption. *Especial I DIREITO GV L. Rev.*, 207.

Žarković-rakić, J. (2007). Bureaucratic Behavior: A Review of the Theory and its Application to Serbian Public Administration, 4 (April), 235–242.

Wedel, J. R. (2003). Clans, cliques and captured states: rethinking ‘transition’ in Central and Eastern Europe and the former Soviet Union. *Journal of International Development*, 15(4), 427-440.

World Bank. 2011. *Governance in Albania: a way forward for competitiveness, growth, and European integration - a World Bank issue brief*. Washington, DC: World Bank.

Reports

The Global Competitiveness Report, 2015-2016, Retrieved from http://www3.weforum.org/docs/gcr/2015-2016/Global_Competitiveness_Report_2015-2016.pdf

Enterprise Survey, Retrieved from <http://www.enterprisesurveys.org/research>

Corruption Perception Index, Retrieved from
<https://www.transparency.org/research/cpi/overview>

Tools for Assessing corruption and integrity in institutions, Retrieved from
http://pdf.usaid.gov/pdf_docs/Pnadf529.pdf

TED (Tenders Electronic Daily), Retrieved from
http://ec.europa.eu/internal_market/scoreboard/_archives/2016/07/performance_per_policy_area/public_procurement/index_en.htm

OECD, Guideline for fighting bid rigging in public procurement,
Retrieved from <https://www.oecd.org/competition/cartels/42851044.pdf>

SIGMA Report on Public Procurement, Retrieved from
<http://www.sigmaweb.org/countries/albania-sigma.htm>

Official Documents (Secondary Data)

Bulletins published in Public Procurement Agency for the period 2011-2016, Retrieved from

<http://www.app.gov.al/t%C3%AB-tjera/arkiva/arkiva-e-buletinit-t%C3%AB-prokurimit-publik/>

Annual Report on the work of Public Procurement Agency, Retrieved from

<http://app.gov.al/rreth-nesh/analizat-vjetore/>

*Public Procurement Laws, DCM, Regulations, Strategies, etc

Official Documents (Primary data)

Decisions of Public Procurement Commission for the period 2015-2017, Retrieved from

http://kpp.gov.al/ppadv/Complaints_Registry.aspx

TABLES

Competition: One Bid Contracts

Table 1: One Bidder Contracts 2013

One bidder contract 2013		
Firms/Joint Ventures	Value of contracts awarded	No of contracts
Intermed	150,003,114	22
Megapharma	168,323,728	16
Alstezo	23,455,299	15
Europetrol sha	34,932,114	15
M.B.Kurti	25,847,452	14
Aldoschfarma	25,238,250	13
Medi-Tel	15,164,790	12
Messer Alba Gaz	54,017,598	12
Biometric Albania	114,182,900	11
ALBDRIN	17,600,871	10
INFOSOFT SYSTEM	111,988,440	9
Kthella	15,002,011	9
Bikade	17,039,300	8
DELIA IMPEX	17,219,929	8
Bami	88,966,616	7
FRAN-OIL	13,946,450	7
Fu Farma	161,068,671	7
FUSHA	63,691,587	7
INFOSOFT OFFICE sh.a	8,505,109	7
Kastrati Sh.a	83,833,733	7
Swissmed	5,142,044	7
Zamira Qazimi	4,280,532	7
Ergi	65,230,222	6
JODY COMPANI	46,027,758	6
JOSIF DELIU	5,541,081	6
Kristalina KH	14,550,657	6

LEKA -2007	56,125,510	6
M.C. Catering	30,474,949	6
MIRI	18,873,669	6
PROKO	11,083,390	6
Servis Auto 2000	21,242,550	6
BNT Electronic's	9,613,400	5
ELKA	4,180,288	5
GENIUS	5,424,855	5
HASTOÇI	20,633,344	5
Klodioda	8,803,500	5
Krijon	10,431,460	5
MORAVA –L	5,043,850	5
Rejsifarma	38,829,800	5
Total number of one bid awarded contracts	7,822,530,833	954

Table 2: One bidder contract, 2014

One bidder contract 2014		
Firms/Joint Venture	Value of contracts awarded	No of tenders
MegaPharma	126,376,746	41
Intermed	61,418,079	26
Trimed	46,292,303	21
Incomed	56,026,112	20
Rejsi farma	28,049,348	20
Florfarma	31,835,788	18
Aldoschfarma	8,564,019	16
Alstezo	68,868,150	15
DELIA IMPEX	24,583,721	15
KTHELLA	31,054,046	14
Biometric Albania	38,789,033	12
Fu Farma	7,807,758	12
KRIJON	38,670,880	12
Info Soft Office	27,717,603	11
Proqual sh.a	8,258,196	11
SAER MEDICAL	185,061,700	11
Medi Tel	14,999,327	10
GTS – Gazra Teknike Shqiptare	11,554,900	9
SAVRIKAL	8,692,910	9
Vinipharma	803,512	9
Delta Pharma	23,464,860	8
Genius	13,764,344	8
Montal	197,750,713	8
ADA-CO	24,336,297	7
ERALD-G	4,990,000	7
Fusha	86,298,502	7
Imifarma	10,020,314	7
Kastrati sh.a	34,390,393	7

MC CATERING	8,579,566	7
Shendelli	6,552,430	7
Vital Z & D	45,344,373	7
EURO 2001	1,859,510	6
INA	3,908,554	6
INFOSOFT SYSTEM	109,799,485	6
JODY – KOMPANY	12,032,444	6
Kombinat Servis	9,973,800	6
LINDA – 80	29,332,074	6
MIRI	20,281,075	6
OUEN	10,553,050	6
Pegasus	259,554,276	6
REGLI	7,231,003	6
RUCI	3,302,048	6
SERVICE – AUTO 2000	5,448,660	6
TOTILA / B	26,841,541	6
A & M	4,241,000	5
Al-Dok	5,666,508	5
Bikade	25,181,750	5
CARA MAT	10,846,011	5
ERAL CONSTRUCTION COMPANY	3,347,600	5
IKUBINFO	97,395,200	5
JOSIF DELIU	4,464,430	5
Komjani	5,715,211	5
MIRGEN DEMCE	9,037,080	5
QATO – 01	7,771,435	5
Shabani 2002	4,051,211	5
SHEHU	11,536,100	5
START CO	5,631,442	5
Vaso Security	17,065,620	5
Total number of one bid awarded contracts	7,229,183,480	1304

Table 3: One Bidder Contract 2014

Firms/Joint Venture	Value of contracts awarded	No of tenders
MegaPharma	126,376,746	41
Intermed	61,418,079	26
Trimed	46,292,303	21
Incomed	56,026,112	20
Rejsi farma	28,049,348	20
Florfarma	31,835,788	18
Aldoschfarma	8,564,019	16
Alstezo	68,868,150	15
DELIA IMPEX	24,583,721	15
KTHELLA	31,054,046	14
Biometric Albania	38,789,033	12
Fu Farma	7,807,758	12
KRIJON	38,670,880	12
Info Soft Office	27,717,603	11
Proqual sh.a	8,258,196	11
SAER MEDICAL	185,061,700	11
Medi Tel	14,999,327	10
GTS – Gazra Teknike Shqiptare	11,554,900	9
SAVRIKAL	8,692,910	9
Vinipharma	803,512	9
Delta Pharma	23,464,860	8
Genius	13,764,344	8
Montal	197,750,713	8
ADA-CO	24,336,297	7
ERALD-G	4,990,000	7
Fusha	86,298,502	7
Imifarma	10,020,314	7
Kastrati sh.a	34,390,393	7
MC CATERING	8,579,566	7
Shendelli	6,552,430	7
Vital Z & D	45,344,373	7

EURO 2001	1,859,510	6
INA	3,908,554	6
INFOSOFT SYSTEM	109,799,485	6
JODY – KOMPANY	12,032,444	6
Kombinat Servis	9,973,800	6
LINDA – 80	29,332,074	6
MIRI	20,281,075	6
OUEN	10,553,050	6
Pegasus	259,554,276	6
REGLI	7,231,003	6
RUCI	3,302,048	6
SERVICE – AUTO 2000	5,448,660	6
TOTILA / B	26,841,541	6
A & M	4,241,000	5
Al-Dok	5,666,508	5
Bikade	25,181,750	5
CARA MAT	10,846,011	5
ERAL CONSTRUCTION COMPANY	3,347,600	5
IKUBINFO	97,395,200	5
JOSIF DELIU	4,464,430	5
Komjani	5,715,211	5
MIRGEN DEMCE	9,037,080	5
QATO – 01	7,771,435	5
Shabani 2002	4,051,211	5
SHEHU	11,536,100	5
START CO	5,631,442	5
Vaso Security	17,065,620	5
Total number of one bid awarded contracts	7,229,183,480	1304

Table 4: Contracts awarded to a single tenderer 2015

Contracts awarded to a single tenderer 2015		
Firms/Joint venture	Value of contracts applied	No of tenders
Omega Pharma	26,089,194	46
Aldosch Farma	47,961,777	36
FLOR Farma	92,136,448	36
KRIJON	73,972,030	22
Biometric Albania	128,137,375	19
INFOSOFT SYSTEM	511,555,235	14
ALSTEZO	26,264,150	13
Genius	26,841,311	12
Fufarma	12,154,245	11
Infosoft office	21,523,439	9
M C Catering	16,392,440	9
Fastech	151,232,460	8
Medicamenta	12,662,220	8
Sinteza Co	22,262,043	8
ADA-CO	9,921,713	7
Ina	17,007,929	7
Trimed	5,849,609	7
Zenit-06	525,000	7
GTS	179,972,257	6
HYUNDAI AUTO ALBANIA	41,297,000	6
Ikub Info	112,256,802	6
INCOMED	20,503,398	6
Intermed	8,021,789	6
Jupiter Group	5,039,764	6
Kronos Konstruksion	115,090,349	6
Megapharma	22,171,660	6
Arblev	13,768,300	5
AVDULI	30,021,471	5

Biocham NRP	10,268,000	5
Ergi	13,679,060	5
Klajger Konstruktion	17,538,547	5
KTHELLA	10,858,512	5
Mane /S	8,358,138	5
Medi – Tel	16,535,360	5
MIRI	17,237,563	5
NAZERI 2000	5,407,466	5
PC – STORE	4,317,200	5
PEGASUS	12,935,108	5
Pharma One	10,078,876	5
R & R Group sh a	16,891,300	5
Saer Medical	3,343,050	5
Shabani 2002	4,828,039	5
SWISSMED	12,727,008	5
TOTILA	9,643,186	5
Vital Z & D	23,526,663	5
Total number of one bid awarded contracts	12,639,690,647	1151

Table 5: Single Bid Contract for Oil Firms (2013-2015)

Firms (OIL)	Thresholds of awarded contracts	Number of contracts awarded
KASTRATI SH A	524,571,364	48
Euro Petrol Durres Albania	43,852,582	22
FLADY – PETROLEUM	20,180,520	20
BOGDAN	18,565,947	13
BOLV OIL sh.a	37,289,120	12
SHPRESA – AL	25,890,576	9
Fran Oil	7,189,984	8
AFT sh.a	148,798,725	6
IMS	21,028,944	6
Josif Deliu	18,023,333	6
Kastrati sh.p.k	8,867,415	6
MEROLLI OIL	3,460,614	6
DEDVUKAJ	6,657,776	5
Kajo Oil	14,892,331	5
A.K.F PETROLEUM	7,540,624	4
Fjortes	7,755,469	4
Kthella	1,666,333	4
RUÇI	3,203,835	4
BOLENA	1,892,722	4
A&T sh.a	8,281,666	3
ERI	2,704,666	3
IMS – IP Gruppo Api	7,165,333	3
KLEIDI	833,333	3
KOMJANI	3,264,750	3
Marsok	15,550,269	3
MEBA - 96	3,638,750	3
NERI	6,393,333	3
SHULKU	2,841,733	3
XHAST	3,717,667	3
Grand Total	1,195,709,714	304

Cost-Efficiency

Table 6: 20 Big in PPRS – Overall Table

Name of the firm	Thresholds PD	Thresholds PS	Total threshold	Value of the Contract PD	Value of the Contract PS	Total value of Contract	cost-efficiency PD	cost-efficiency PS	average efficiency
Fusha	3,788,475,147	2,517,033,280	6,305,508,427	3,562,953,152	2,517,033,280	6,079,986,431	8.2%	5.5%	6.8%
Gjoka Konstruksion	4,809,078,570	1,733,310,703	6,542,389,273	4,085,936,204	1,567,634,190	5,653,570,394	10.6%	8.7%	9.6%
Agri Konstruksion	2,730,800,355	895,511,338	3,626,311,693	2,575,838,744	850,841,378	3,426,680,122	8.0%	9.4%	8.7%
Everest	873,784,431	2,276,745,101	3,150,529,532	793,334,079	2,145,507,480	2,938,841,559	4.7%	7.7%	6.2%
Varaku E	1,288,882,608	1,352,594,482	2,641,477,090	877,713,712	1,220,764,040	2,098,477,751	22.4%	19.1%	20.7%
Arifaj	2,119,026,493	572,672,537	2,691,699,030	1,456,708,913	547,490,600	2,004,199,513	9.4%	3.3%	6.3%
GPG Company	1,447,519,388	586,464,907	2,033,984,295	1,416,461,021	516,892,438	1,933,353,459	6.6%	13.0%	9.8%
Shanci Invest	1,069,193,094	905,864,261	1,975,057,355	1,025,153,803	857,828,635	1,882,982,438	7.3%	10.2%	8.8%
Besta	204,930,138	1,747,419,536	1,952,349,674	199,197,931	1,672,542,187	1,871,740,118	1.9%	9.5%	5.7%
Vellezrit Hysa	564,600,383	1,366,869,611	1,931,469,994	542,441,235	1,311,974,320	1,854,415,555	3.3%	6.8%	5.0%
Junik	1,159,343,524	928,962,034	2,088,305,558	948,947,180	793,556,265	1,742,503,445	10.0%	8.7%	9.4%
BE-IS	486,706,905	1,421,446,344	1,908,153,250	415,744,113	1,294,494,410	1,710,238,523	14.2%	9.8%	12.0%
BNT Elektroniks	323,458,956	713,765,936	1,037,224,892	271,105,552	616,392,299	887,497,850	16.0%	23.6%	19.8%
Aurora Konstruksion	313,104,292	583,848,311	896,952,603	272,888,281	506,379,259	779,267,539	10.9%	15.0%	12.9%
Derveni 1	588,332,362	403,791,140	992,123,502	436,173,019	317,463,520	753,636,539	15.8%	21.5%	18.6%
Fastech	70,261,205	774,416,932	844,678,137	64,617,555	684,239,003	748,856,558	5.0%	8.9%	6.9%
Korsel	201,202,756	494,715,902	695,918,658	193,754,787	492,590,802	686,345,589	4.5%	2.6%	3.6%
Pegasus	367,816,889	253,403,404	621,220,293	366,697,911	252,261,960	618,959,871	1.0%	2.0%	1.5%
SAER Medical	201,210,702	513,251,887	714,462,589	171,207,040	407,551,636	578,758,676	6.1%	11.3%	8.7%
Kacdedja	384,535,583	271,349,021	655,884,604	336,651,447	195,981,668	532,633,115	9.2%	10.9%	10.0%
							8.7%	10.4%	9.6%

Table 7: Cost Efficiency according to categories threshold

PPRS	Value of Contract / Cost-efficiency										
	> 700.000.000			700.000.000-10.000.000			10.000.000-800.000			below 800.000	
Name of the firm	PD	PS	Avarage	PD	PS		PD	PS		PD	PS
Fusha	0.2 %		0.20%	10.00%	7.37%	8.69%	4.60%	1.50%	3.05%		
Gjoka Konstruksion	15.72%	9.18%	12.45%	12.35%	16.34%	14.35%	1.55%		1.55%	6.36%	0.00%
Agri Konstruksion	0.06%		0.06%	9.43%	7.98%	8.71%	2.23%	11.27%	6.75%		
Everest		3.20%	3.20%	4.93%	8.10%	6.52%	3.92%	7.60%	5.76%		
Varaku E		0.65%	0.65%	25.80%	21.70%	23.75%	19.20%	20.33%	19.77%		0.00%
Arifaj	35.00%		35.00%	3.82%	3.92%	3.87%	16.90%	0.77%	8.84%		
GPG Company	0.10%		0.10%	9.40%	16.10%	12.75%	1.50%	11.60%	6.55%		0.50%
Shanci Invest				8.42%	7.60%	8.01%	0.86%	22.10%	11.48%		
Besta				3.00%	6.40%	4.70%	1.00%	16.70%	8.85%		
Vellezrit Hysa		0.60%	0.60%	3.70%	8.70%	6.20%	2.10%	0.70%	1.40%		
Junik				12.38%	7.54%	9.96%	7.56%	11.33%	9.45%	2.39%	0.00%
BE-IS				14.78%	9.86%	12.32%	13.89%	9.62%	11.76%		6.69%
BNT Elektroniks				14.22%	11.20%	12.71%	19.72%	15.80%	17.76%	18.83%	37.40%
Aurora Konstruksion				13.20%	16.35%	14.78%	8.60%	14.24%	11.42%		
Derveni 1				15.90%	18.10%	17.00%	15.80%	22.60%	19.20%		30.40%
Fastech				10.60%	9.50%	10.05%	2.70%	7.70%	5.20%		7.80%
Korsel				4.25%	0.72%	2.49%	3.58%	3.60%	3.59%	8.51%	5.76%
Pegasus				0.43%	0.32%	0.38%	1.02%	3.26%	2.14%	2.85%	0.06%
SAER Medical				5.50%	25.33%	15.42%	0.10%	6.40%	3.25%	22.40%	14.25%
Kacdedja				11%	21%	16.14%	17%	1%	8.75%	0%	
Average	10.2%	3.4%	6.5%	10%	11.20%	10.44%	7.18%	9.89%	8.32%	8.76%	9.35%

3. Appearing and disappearing of firms when the governmental elite changes

Table 8: 20 firms out of 50 top powerful firms (2011-august 2013)

No.	Name of the firm	Thresholds	Value of the Contract	Cost-efficiency
1	Varaku E	1,288,882,608	877,713,712	22.40%
2	BNT Elektroniks	323,458,956	271,105,552	16.00%
3	Derveni 1	588,332,362	436,173,019	15.80%
4	BE-IS	486,706,905	415,744,113	14.20%
5	Aurora Konstruksion	313,104,292	272,888,281	10.90%
6	Gjoka Konstruksion	4,809,078,570	4,085,936,204	10.60%
7	Junik	1,159,343,524	948,947,180	10.00%
8	Arifaj	2,119,026,493	1,456,708,913	9.40%
9	Kacdedja	384,535,583	336,651,447	9.20%
10	Fusha	3,788,475,147	3,562,953,152	8.20%
11	Agri Konstruksion	2,730,800,355	2,575,838,744	8.00%
12	Shanci Invest	1,069,193,094	1,025,153,803	7.30%
13	GPG Company	1,447,519,388	1,416,461,021	6.60%
14	SAER Medical	201,210,702	171,207,040	6.10%
15	Fastech	70,261,205	64,617,555	5.00%
16	Everest	873,784,431	793,334,079	4.70%
17	Korsel	201,202,756	193,754,787	4.50%
18	Vellezrit Hysa	564,600,383	542,441,235	3.30%
19	Besta	204,930,138	199,197,931	1.90%
20	Pegasus	367,816,889	366,697,911	1.00%

Table 9: 20 firms with the higher value of contracts (September 2013-2015)

No.	Name of the firm	Thresholds	Value of the Contract	Cost-efficiency
1	BNT Elektroniks	713,765,936	616,392,299	23.60%
2	Derveni 1	403,791,140	317,463,520	21.50%
3	Varaku E	1,352,594,482	1,220,764,040	19.10%
4	Aurora Konstruksion	583,848,311	506,379,259	15.00%
5	GPG Company	586,464,907	516,892,438	13.00%
6	SAER Medical	513,251,887	407,551,636	11.30%
7	Kacdedja	271,349,021	195,981,668	10.90%
8	Shanci Invest	905,864,261	857,828,635	10.20%
9	BE-IS	1,421,446,344	1,294,494,410	9.80%
10	Besta	1,747,419,536	1,672,542,187	9.50%
11	Agri Konstruksion	895,511,338	850,841,378	9.40%
12	Fastech	774,416,932	684,239,003	8.90%
13	Junik	928,962,034	793,556,265	8.70%
14	Gjoka Konstruksion	1,733,310,703	1,567,634,190	8.70%
15	Everest	2,276,745,101	2,145,507,480	7.70%
16	Vellezrit Hysa	1,366,869,611	1,311,974,320	6.80%
17	Fusha	2,517,033,280	2,299,537,533	5.50%
18	Arifaj	572,672,537	547,490,600	3.30%
19	Korsel	494,715,902	492,590,802	2.60%
20	Pegasus	253,403,404	252,261,960	2.00%

Tables on Perception on Corruption

Table 10: Enterprise Survey Data

<i>Countires</i>	<i>Bribery incidence</i>	<i>Bribery depth</i>	<i>% of firms expected to give gifts to secure government contract</i>
<i>Albania</i>	<i>19.5</i>	<i>16.7</i>	<i>34.3</i>
<i>Montenegro</i>	<i>18.8</i>	<i>12.3</i>	<i>0</i>
<i>Eastern Europe and Central Asia</i>	<i>17.4</i>	<i>13.6</i>	<i>26.2</i>
<i>Bosnia and Hercegovina</i>	<i>10.7</i>	<i>7.8</i>	<i>8.3</i>
<i>Macedonia</i>	<i>7.5</i>	<i>3.9</i>	<i>6.1</i>
<i>Serbia</i>	<i>6.1</i>	<i>4.5</i>	<i>40.2</i>
<i>Croatia</i>	<i>3.9</i>	<i>2.5</i>	<i>14</i>
<i>High income: OECD</i>	<i>1.7</i>	<i>1.2</i>	<i>10.7</i>
<i>Slovenia</i>	<i>0.2</i>	<i>0.1</i>	<i>31.5</i>

*Table 11: Transparency International Corruption Perception Index
(scale of 0 highly corrupt - to 100 very clean)*

Countries	2016 Score	2015 Score	2014 Score	2013 Score	2012 Score
Albania	39	36	33	31	33
Bosnia and Hercegovina	39	38	39	42	42
Serbia	42	40	41	42	39
FYROM	37	42	45	44	43
Montenegro	45	44	42	44	41
Croatia	49	51	48	48	46
Slovenia	61	60	58	57	61

Table 12: The Global Competitiveness Index

(1 = show a great extent; 7 = do not at all)

st pillar: Institutions	Favouritism in decisions of government officials	Burden of government regulation
Albania	3.4	4.5
Macedonia	3.3	3.9
Montenegro	3.3	3.6
Slovenia	2.7	2.6
Croatia	2.7	2.1
Bosnia and Hercegovina	2.5	2.5
Serbia	2.4	2.2

Table 13: The Global Competitiveness Index: Corruption

Countries	2015-2016	2014-2015	2013-2014
Albania	21.7	21.2	25.5
Slovenia	6.3	8.9	8
Croatia	5.6	12.4	10.9
Macedonia	7	5	8.7
Montenegro	8.2	12.1	10.1
Serbia	10	8.3	13.8
Bosnia and Herzegovina	12	NA	3.8