

Corruption and innovation in the Albanian public procurement system

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Abstract

This paper examines the measures and means used to fight against corruption in public procurement in Albania.

Because public procurement is one of the key areas where the public sector and the private sector interact financially and this interaction is based on public money, it is a prime candidate for corrupt activity, cronyism and favoritism as well as outright bribery.

The question marks that this paper raises are: what are the means used in the war against corruption in the public procurement field in Albania? Did they had any real impact or they just reshaped the ways of doing corruption?

The main finding of this paper is that introduction of e-procurement system was one of the most appropriate means to fight corruption in Albania, because this system fixed one of the biggest problems of the Albanian Public Procurement system; lack of transparency. The electronic system is transparent, since it provides the increasing of information passing through it, and the most important, it enhances the responsibility in relations between the contracting authorities and economic operators, enabling a more effective and efficient use of the tax payers' money.

Keywords: Public Procurement; Corruption; Corruption in Procurement; E-procurement; Electronic System.

Introduction

Public procurement is a process used by government to purchase goods, services, or works. Within different public procurement systems the existence of different objectives and the weight attached to the various objectives can differ markedly. For example, some systems attach much more importance than others to policies of fair and equal treatment of providers, to the use of procurement to promote social objectives, or to accountability- with the result that the government may be willing to pay higher prices for goods or services or to accept greater process costs to implement these values.¹

As public procurement is one of the key areas where the public sector and the private sector interact financially, and this interaction is based on public money, integrity

¹ Arrowsmith, S. (2012), p. 47

takes a very important role. Integrity refers, first, to the idea that procurement should be carried out without any influence of corruption.²

Methodology

The methodology used is analyzing several data, statistics and documents, aiming to answer some questions, based on which this paper is build. The conclusions will come through the discussion of these questions: Why is corruption so closely related to public procurement? How and in what levels does corruption affect the main purpose of the public procurement process, value for money? Which are the factors that impact on the level of corruption in this sector? Which might be the most effective means to fight corruption? Are these means standard, and having the same effect on all systems? And finally, is it possible to vanish the corruption in public procurement, or it can only be found ways to reduce it?

As corruption is more related to the perceptions than facts and figures, in this paper are analyzed reports, studies and researches done on the level of perception of corruption in public procurement, media coverage of this phenomena, and furthermore, analyzing all data that can help on a deductive way on the results of the fight against corruption, such as statistics on complains, public procurement procedures awarded, average of economic operators participating in a procedure, procured funds, etc. Further on, references about the system have been gathered from associations and representatives of economic operators as well as from Contracting Authorities. Information and data from European Commission' Progress Reports and from studies conducted by NGOs and donors on e-procurement system in Albania has been consulted.

Analysis and Results

What is public procurement corruption and its perception, in Albania?

Corruption comes from a Latin word "corrumpere" which means to break something and during the action of corruption, the law, legal rule, a moral norm and in worse situations communities and human personalities, are broken (Farida & Ahmadi-Esfahani, 2006).

According to the World Bank the definition of the corruption in public procurement include the offering, giving, receiving or soliciting; directly or indirectly, of anything of value, to influence the action of a public official in the procurement process or in contract execution (World Bank, 2004). If I will refer to the Albanian practice in public procurement (World Bank Study Strengthening Country Procurement Systems: Results and Opportunities. Capacity development - Country Case: Albania), it will be the case to add to the above mentioned definition, the situation of influencing in procurement corruption, the "no action" of a public official. This had been a very common situation in Albania, when a public procurement official, do not provide tender documents to an economic operator, aiming the favorite of another economic operator. In this case, we have a corruptive

² Arrowsmith, S. (2012), p. 50

“no-action”, because this is in breach of the regulation and in the same time, it is a breach of the competition principle.

According to the Country Procurement Assessment Report (CPAR) 2001, public procurement in Albania is a particular target of corruption, with more than half of all firms stating that they did not participate in government procurement, because competition is unfair.

Furthermore the CPAR 2001 pointed out the obstacles for information and argued that the lack of transparency concealed corruption and undermined the confidence of bidders in the fairness of public tenders and one of the key recommendations of CPAR 2001 was the need to combat corruption and strengthen enforcement, through application of internet technology to improve dissemination of information on bidding opportunities.

In the World Bank Institute global survey of Corruption Control in 2004, Albania scored - 0.72 on a scale from - 2.5 to 2.5, placing it among the bottom 30 percent globally³.

Also a perception survey for Corruption in Albania⁴ reported that “almost 65 percent of those who answered (almost one third of the sample), say that in order to receive a procurement contract, it is necessary to offer a bribe. 40 percent say that this payment range from 1 percent to 10 percent of the value of the contract, while another 25 percent say that the payment is more than 10 percent of the contract value”.

The same “perception” as the above mentioned international organisms and stakeholders, had also the European Commission in its Albania 2005 Progress Report⁵. In the procurement dedicated paragraph, EC had expressed its concerns about the complexity and inconsistency of the whole legal framework, which combined with weak institutions and weak implementation of basic principles such as transparency, equal treatment, free competition and non-discrimination, result in procurement system that strongly discriminates against foreign bidders in favor of local ones, does not achieve the best value for money and efficiency in the procurement process and leaves room for corruption and collusion.

The issue with corruption is that you can never exactly measure it, but what was for sure, in 10 year of history of the public procurement system⁶, in Albania, in the year 2005, the perception was that corruption in public procurement was flourishing⁷. From the analytical reports done from several international organizations, there was a list of problems impacting the efficiency of the procurement system, which might be

³ World Bank Institute (May 2005).

⁴ See Casals and Associates and Institute for Development Research and Alternatives, June 2006. <http://www.ebrd.com/pages/research/economics/data/beeps/beeps05.shtml>

⁵ See European Commission (2005, November 9). Albania Progress Report, Brussels. http://ec.europa.eu/enlargement/archives/pdf/key_documents/2005/package/sec_1421_final_progress_report_al_en.pdf

⁶ Shahollari, R. (2008).

⁷ The 2005 BEEPS Survey reports that the percentage of firms saying that bribery is frequent to obtain government contracts has raised from about 32% in 2002, to about 41 percent in 2005.

translated as a lot of possibilities for procurement and government officials to misuse the law and abuse the procurement process.

Why are corruption and procurement so related?

Corruption and public procurement are strongly related because public procurement is a process that has as a key component so called “public funds”⁸. This component is very attractive and exposed towards corruption mainly for two reasons, which are in fact directly related with the meaning of these two words: “public” “funds”: as on the bases of this process stands the management of funds, there is a direct possibility to profit some money, and second, as these funds are “public money”, no one is personally related to them, so it is easier to abusively profit from them. There are several situations when corruption can occur, but the most common case in Albania is paying a bribe to get the contract, even when you are on your right to get it⁹. This might be the case of other sectors of public administration too, but in procurement it is easier to make it happen and it is “motivated” somehow because the private firm which will pay a bribe, by getting the contract, at the very end will win some money.

How does corruption affect procurement process?

It has been mentioned here above, that the overall objective of the public procurement system, is the efficiency, which is often referred to as “value for money”¹⁰. If a procurement procedure will be concluded based on a corrupt agreement between public officials on one side and the private firms on the other side, the main objective of the procurement will not be achieved. This means that corruption affect directly and negatively the desirable result of the procurement process. The award of contracts, on the basis of corrupt considerations such as bribe or personal relationship, may prevent authorities from achieving value for money in their acquisitions, since it may mean that contracts will not be awarded to the best firms¹¹. Another impact of corruption in the procurement process is violation of the fair competition, so once again the result of the process will not be the best value for money. The violation of the competition might happen directly, or indirectly; direct violation is when the tender is not given to the best offer, while indirect violation of the competition is, the decrease of the number of economic operators that participate in a tender, because of the low level

⁸ According to article, 3, point 4 of PPL 9643/2006, as amended, “Public Funds” means:

- a) any monetary value of the State Budget determined to be used for public contracts;
- b) any monetary value of the local budget determined to be used for public contracts;
- c) aid or credit funds provided by foreign donors, based on international agreements, which do not require implementation of other procedures different from this law;
- d) income from State, local enterprises, marketing associations and any other entity, where the State has the majority of the capital shares.

⁹ See Casals and Associates and Institute for Development Research and Alternatives, June 2006. <http://www.ebrd.com/pages/research/economics/data/beeps/beeps05.shtml>

¹⁰ Arrowsmith, S., Wallace, D., & Linarelli, J. (2000).

¹¹ Arrowsmith, S. (2012), p.50

of trust toward the system¹². Another bad impact of the corruption might happen during the execution of the contract. If the winner of the contract is not “best offer”, but “best bribe”, the execution of the contract might not be as it should, because the contractor has already “bought” someone in the institution, which means that he has paid already the price of not being “the best”, so either the contract implementation will not be the best possible.

Which are the factors that impact corruption in procurement?

Factors which impact the corruption in procurement may be divided in two main categories: general factors and specific factors. The level of the second category might be affected by the first one.

The causes of corruption are rooted in the particular political and economic conditions of each country, the complexity of which makes remedial efforts difficult (World Bank, 1992).

Every developing country has high levels of corruption, irrespective of the size of the public sector, government policies, culture, religion, ethnic fragmentation and political institutions.¹³ Except the two main factors such as political and economic conditions, the level and quality of bureaucracy does affect the level of corruption. The lack of meritocratic recruitment and promotion and the absence of professional training in the bureaucracy are also founded to be associated with high corruption (Rauch & Evans, 1997).

On the other hand there are also some specific factors which affect the level of corruption in procurement. First of all there are several ways of doing corruption in procurement; it might happen between officials and economic operators, among economic operators themselves, because of political influence, etc.

A specific factor which increases the possibilities of corruption to occur is that economic operators stimulate it, because they will profit directly in economic terms.

Lack of transparency is another factor which impacts directly to the level of corruption in procurement, in both directions; lack of transparency stimulates paying of bribes by economic operators to get the information and on the other hand gives more space to the responsible officials to behave not in accordance to the rules, because the possibility to control them is low¹⁴.

¹² See the Country Procurement Assessment Report (CPAR) 2001

¹³ Gray, H. & Khan, M. (2006). (accessed on <http://eprints.soas.ac.uk/9956/> on January 2013).

¹⁴ *Idem* note 5

Which are effective means to fight corruption?

Finding effective means to fight corruption, needs at first to identify what does stimulate corruption in specific terms and which are the most common behaviors of procurement officials and/or economic operators, which are perceived as corruptive actions.

CPAR 2001 concluded that a good procurement law (in Albania) is being undermined by poor application and enforcement. Weakness of the PPA made the law easy to ignore, resulting in uncompetitive procurement methods and poor value for money and corruption. The CFA 2006¹⁵ found no improvement in this situation.

The same picture comes out, even after a new law¹⁶ on public procurement was introduced. According to the respective EC Progress Reports (from 2006 to 2009), or other reports on corruption in Albania¹⁷, the general situation of corruption and specifically the situation of corruption in procurement, was not yet improved.

This conclusion leads us to the idea that rules might be very good, but in any case if people who are in charge to implement them, do not have integrity, is not important any more how good is a rule and in this case the monitor of the whole system becomes very important.

One of the biggest problems in Albanian procurement system at that time (before application of e-procurement system) was the impossibility of private business/community to have access on tender documents, for procedures which will be performed by Contracting Authorities. This was closely related to the lack of transparency in the procurement process. Every one that was interested on tender documents had to buy them in hard copy at the Contracting Authority office¹⁸. Very often happened that Contracting Authorities, had no "good will" to sell that documents, and in the best case, economic operators reached the above mentioned documents, some days before the opening of the tender, not having in this way the necessary time for preparation of their offer. The lack of transparency did impossible the access of economic operators or everyone else interested, to the other steps/phases of the procurement process, which led directly to a high level of corruption. As the procurement procedures were performed on paper bases, even though the requirement of keeping written records on every step of the procedure often happened that some documents were taken off from the folder or some others were added later. Also the evaluation phase was not transparent at all. An indicator of all these problems, as mentioned above, was the increased number of complains. The highest number of complains during that time was for not having access on tender

¹⁵ World Bank. (2006). Albania - Country Fiduciary Assessment. Washington D.C

¹⁶ Reference to Law no. 9643/2006 "On Public Procurement"

¹⁷ Skardziute, A. (2011). Corruption in Albania (Report). Hertie School of Governance. Available at <http://www.againstcorruption.eu/uploads/norad/Albania.pdf>, See also Transparency International publications on Corruption Perceptions Index. Available at www.transparency.org.

¹⁸ See Law no.7971/1995 "On Public Procurement", Official Gazette no. 18/1995, pg. 778.

documents. The “artificial” increase of number of complains is very easy identified if we compare the number of complains done before and after starting implementation of e-procurement system. In concrete, the number of complains done before application of EPS was 1023 complains per year, while the number of complains submitted after publishing every information on procurement process in PPA website, was about 600 compliances per year.

As the biggest problem of procurement system in Albania was the lack of transparency (which leads to corruption), one of the best and direct ways of fighting corruption was to increase the level of transparency of the procurement process. According to Transparency International¹⁹ e-procurement is a fantastic tool for reducing corruption and increasing integrity in public procurement systems. Globally there have been concrete examples in Albania and also in South Korea, among others. This shows that e-procurement provides not just a step, but a leap forward in terms of increasing the integrity of public procurement systems. In these circumstances an e-procurement initiative was introduced in Albania in 2008.²⁰

According to the Public Procurement Agency, the e-procurement system in Albania offers a secure, efficient and transparent preparation and administration of all tender-related documents, removing unnecessary paper work and providing secure data flow throughout the entire process. All the tender documents from the contract notice to the winner notice and further on to the notice of the signed contract are available in the electronic public procurement system, and all transactions, starting from the download of documents till the bidding by electronic means, may be done at anytime and from anywhere the economic operators are in Albania, or in any other country of the World²¹.

The e-procurement system provides also a greater participation of the economic operators in the public procurement procedures, since they can submit their offers by electronic means, from their workplace, and having information on the procurement procedure they have applied in real time, without being necessary to be present at the Contracting Authorities premises. According to the American Chamber of Commerce Survey (AmCham Survey), 70% of respondents said that using EPS has increased the number of procurement procedures for which they submitted bids in 2009, as compared to the paper-based system.

¹⁹ <http://blog.transparency.org/2011/02/16/combating-corruption-in-the-eu-through-e-procurement/>

²⁰ See Public Procurement Agency of Albania (2008). *Annual Report*. [On-line]. Available at www.app.gov.al. [Retrieved September 2012]

²¹ See Public Procurement Agency of Albania (2009). *Annual Report*. [On-line]. Available at www.app.gov.al. [Retrieved September 2012]

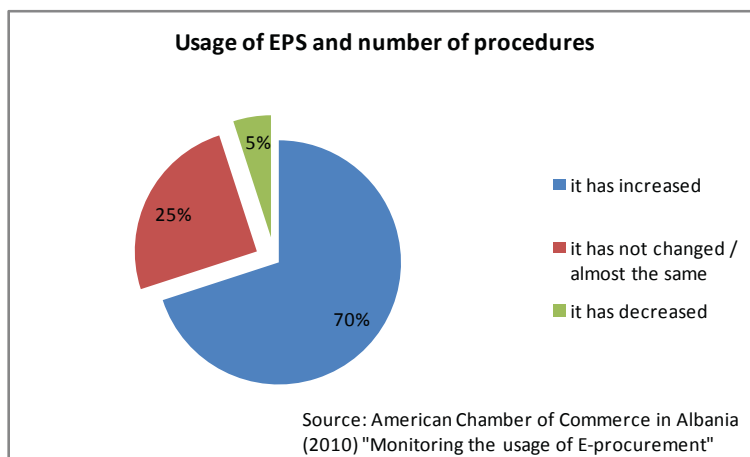


Figure 1. Usage of EPS and number of procedures

Through the on-line publication of these procedures, all economic operators have the opportunity to get informed on procedures of their interest. They may download the complete documentation of the tender and participate in a tender by submitting an offer electronically through their accounts. According to the AmCham Survey, 91% of Tirana-based businesses and 77% of those outside Tirana use their company's office to interact with EPS. Number of bidders from paper based procedures to electronic procedures has increased from 2.3 to 7.7 bidders. This is one of the strongest impacts of using e-procurement system in Albania. Again, a comparative view, especially between number of bidders in 2008 and 2009, which is the first year of application of EPS, makes clear the difference²². The following graph presents the total number of bids in the Public Procurement Agency website in 2009 compared to 2008.

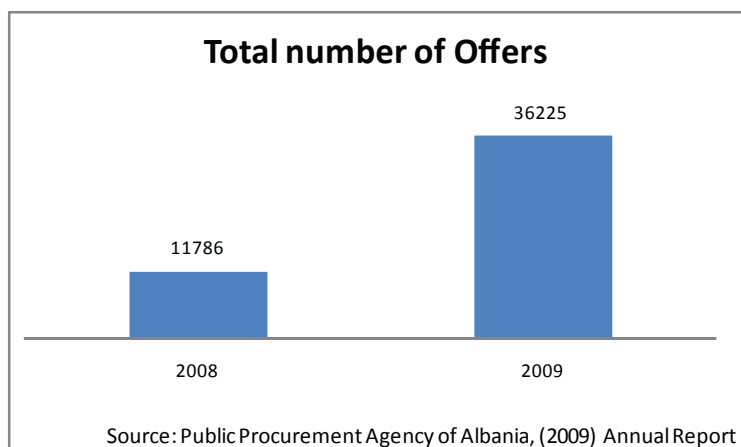


Figure 2. Total number of Offers

²² See Public Procurement Agency of Albania (2009). *Annual Report*. [On-line]. Available at www.app.gov.al. [Retrieved September 2012]

This is a clear indicator of a higher access in public procurement procedures and higher participation of economic operators leads to higher competition and savings.

Having into consideration the data as referred above and features of the e-procurement system, we can conclude that it reduces the possibility of corruptive deviations. Possibility of individual contacts among economic operators interested to bid in a tender is avoided, which logically reduces the possibility of collusions. On the other hand performing procedures through the electronic system, eventually avoids individual contacts of contracting authorities officials and bidders, reducing the possibility of corruptive actions. According to the AmCham Survey, 71% of the interviewed businesses said that they communicate only via EPS with respective procurement specialists of the CAs to which they submitted bids. Only 7% of the surveyed EOs still relied on personal contacts with CAs.

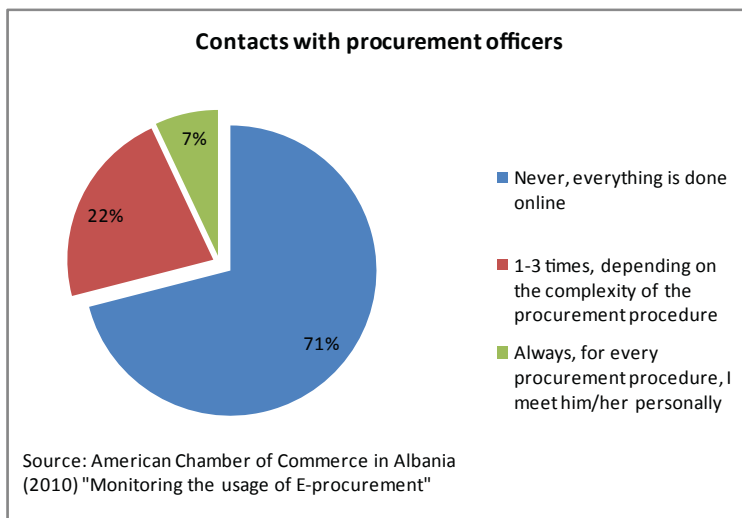


Figure 3. Contacts with procurement officers

EPS has increased the procurement procedures effectiveness. There are no more delays and the procedures are completed in a short time. Compared to paper-based procurement procedures, communication between CAs and EOs is flowing much faster. Fair competition in procurement procedures is now guaranteed to the maximum. Potential bidders are not known ahead of time because participation in a given procedure is anonymous until the bid opening day. EOs have no way of finding through official channels, information about other potential bidders. At the same time, OEC members feel that the burden of unofficial and undue interventions by potential bidders has been lifted from their shoulders, as nobody has information about the bids that have been submitted, before the bid opening day.

Moreover, the electronic system does generate reports enabling ulterior inspections, ex post monitor of procedures and reducing the possibility of corruptive deviations. It

is constructed in such a way as to maintain at all times a copy of all data and all actions performed on it.

The overall impact of this initiative is transparency and reduction of corruption. The electronic system is transparent, since it provides the increasing of information passing through it, and the most important, it enhances the responsibility in relations between the contracting authorities and economic operators, enabling a more effective and efficient use of the tax payers' money. Using EPS has improved access to information and reduced procedural costs (Commission of the European Communities, 2009).

According to the Albania Report on Benchmarking and Draft Capacity Assessment 2010, introduction of the e-GP platform undoubtedly had a very positive effect in reducing corruption and overall opacity of the procurement system, while increasing transparency.

After analyzing all the above data and facts, it can be concluded that the application of e-procurement system in Albania serves as an effective instrument in fighting corruption on public procurement. This happened because one of the biggest problems of public procurement system in Albania was the lack of transparency, and increasing transparency was the big solution offered from the e-procurement system. The most effective means to fight corruption are those which provide solutions to the existing problems. However, considering that problems are not always and not everywhere the same, appropriate means to fight corruption may differ depending on the system's characteristics.

Conclusions

The fight against corruption is strongly related to the nature and level of it. A study of the effective means to fight corruption should be anticipated by a study of the forms of corruption. On the other hand to study corruption, it's really difficult, because corruption is something that everyone who is engaged in does it in secrecy and no one wants to be pronounced on it. This task is becoming even more difficult, when we speak about public procurement process. This phenomena happens because, corruption in procurement constitutes a vertical relationship between the public official concerned, acting as a buyer in the transaction, and one or more bidders, acting as sellers in this instance. This means that both parties profit from these corruptive actions and no one of them is willing to denounce and fight corruption. In this situation the research on the existence of the corruption is based only in the "voices" of them who are unhappy in a procurement procedure. The issue here is that, it's really difficult and sometime impossible to prove the existence of corruptive actions. This deducts to the theory that there is much more possibility for the corruption to occur in a situation where the monitor and control are missing. The possibility to control and to ex-post monitor public procurement procedures, are strongly related to the existence of the transparency. That means that the lack of transparency is an optimal environment for

the corruption to flourish. And this was the situation in Albania, from 1995, when the first law on public procurement 7971/1995, came into force, to 2007 when the first steps of electronic procurement were introduced²³.

Even though application of e-procurement is an appropriate tool for fighting corruption in Albania, because it provided solution to the biggest problem the procurement system had; lack of transparency, it cannot eradicate corruption. It seems that perception of corruption is even stronger than corruption phenomena itself.

According to assessment reports or surveys²⁴, perception of corruption in Albania is still high and considerable. According to the Transparency International Publications on Corruption Perceptions Index, Albania position is going down in the classification from 2010 to 2012, showing that the perception is that the level of corruption is increased. Certainly this does not refer directly and only to public procurement, but public procurement is one of the most sensitive areas toward corruption.

Another strong factor which makes almost impossible eradication of corruption in public procurement is that corruption might not necessarily be a fact, but it might be only a perception of the unhappy voices and in procurement process there is only one winner and some potential "unhappy" voices.

This phenomenon is reflected also in media coverage of the procurement corruption. It seems that what media says on procurement corruption depends on who is interviewed; if unhappy stakeholders are interviewed, yes there is corruption in public procurement²⁵, if declarations of representatives from Government, or public administration are cited, e-procurement has fought corruption in procurement and it does not leave any space for abusive actions²⁶.

This is an indicator that application of e-procurement is an effective mean but it cannot be the gold solution, as far as the corruption is rooted deeper in the whole state system.

As it is discussed above, especially in developing countries, corruption is rooted in political and economic conditions, and if the main objective is to eradicate corruption at all, the war against corruption should begin from these political and economic conditions, which might be called as "corruption producers" in all key sectors of the state. Lack of transparency in procurement is not the source of corruption, but just one stimulant which creates the desirable conditions for corruption to happen. Saying this, increasing transparency in the procurement process, will not definitely destroy

²³ Public Procurement Agency of Albania (2007). *Annual Report*. [On-line]. Available at www.app.gov.al. [Retrieved December 2012]

²⁴ <http://blog.transparency.org/2011/02/16/combating-corruption-in-the-eu-through-e-procurement/>

²⁵ See "Shqip" newspaper, Sunday, February 1, 2009. Available at www.gazeta-shqip.com

²⁶ See "Shqip" newspaper, Sunday, February 3, 2009, available at www.gazeta-shqip.com. See also "Koha Jonë" newspaper "Tenders, about 300 private companies complains on abusive actions", available at <http://www.gazeta.kohajone.com/zarticle.php?id=63261>

the source of corruption, but will only avoid that kind of corruption, which used to happen because of the lack of transparency.

Having into consideration all issues discussed and analyzed in this paper, we can certainly say that implementation of e-procurement, was one of the most effective means, which really impacted the reduction of corruptive behaviors in public procurement in Albania. In this paper there have been examined and shown concrete indicators of the reduction of corruption in the procurement system, which relates to e-procurement application, as the higher number of economic operators participating in procurement procedures and having confidence in the procurement system; the decrease of direct contacts between procurement officials and private parties and the increasing of savings.

Nevertheless, aiming a comprehensive fight against corruption, the implementation of the anti-corruption strategy should take place, because it's important to fight corruption from all directions and in all its possible forms. Transparency alone cannot make it; rather it should come along with good and appropriate rules. Good rules on the other hand are not enough; they should be well implemented from all stakeholders. To be well implemented, all stakeholders and mainly procurement officials and economic operators, should be well trained and with high integrity. To be with high integrity, the entire political, economic and social environment where they live and work should be so. This is why even after introducing e-procurement system in Albania, the corruption is not uprooted, but only reduced.

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