Research Article

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Comparative review of breaches of public procurement principles in Albania and EU case law

PhD (C.) Jona Spahiu
University of Tirana, Albania

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Abstract

Public procurement remains a complex administrative process which must guarantee some fundamental principles, such as equality between applicants, transparency, reasoning of decisions, etc. These principles are guaranteed at the international level but also in the domestic legislation in Albania. Despite this, by analysing the practice of the Public Procurement Commission in Albania, the implementation of the principles in practice remains an evident challenge. This article analyses the violations of the main principles in the public procurement process in Albania and a comparative analysis with the European practice by evidencing how the decisions of the Public Procurement Commission have been in accordance with the Euro. The Albanian practice of the PPC suggests that these standards are already part of the domestic legal language. However, full approximation to the European acquis requires three additional things: more structured reasoning, limiting the formalism that undermines the effectiveness of the appeal, and wider use of proportionality analysis. pean judicial practice.

Keywords: Procurement principle, Public Procurement Commission.

1. Introduction

The procurement process is an administrative function governed by principles established in legal and strategic documents at both national and international levels. These principles are outlined in Article 18 of the Directive 2004/18/EC, which emphasizes equal treatment and non-discrimination among economic operators, as well as the obligation for contracting authorities (public institutions) to act in a transparent and proportionate manner (European Commission, 2018). Furthermore, this provision establishes standards for structuring procurement procedures in a way that promotes competition and prevents the artificial splitting of tenders to favor specific bidders. At the international level, reforms in public procurement have

been significantly influenced by organizations such as the World Trade Organization and the Organisation for Economic Co-operation and Development. For instance, the Agreement on Government Procurement under the WTO framework establishes rules aimed at ensuring transparency, fairness, and open competition across countries (World Trade Organization, 2012). Similarly, the OECD promotes procurement systems that operate with integrity, accountability, and efficiency (Organisation for Economic Co-operation and Development, 2009). Within the European Union, public procurement is regulated through a comprehensive legal framework, particularly Directive 2014/24/EU. This directive consolidates key principles guiding procurement, including transparency, equal treatment, non-discrimination, proportionality, and mutual recognition. These principles are essential for ensuring the proper functioning of the EU internal market. In practice, transparency requires that all relevant information, such as tender notices and selection criteria be clearly published and accessible to all interested parties. Equal treatment and non-discrimination ensure that companies from all EU member states are treated fairly and have equal opportunities to compete. The principle of proportionality ensures that requirements imposed by contracting authorities are appropriate and not excessively restrictive. To assess the implementation of these principles, the European Commission utilizes tools such as the Single Market Scoreboard, which evaluates factors including the competitiveness of procedures, system efficiency, and the participation of small and medium-sized enterprises. These indicators provide insight into the effectiveness of public procurement practices in real-world contexts.

2. **Procurement principles according to the national law and the EU**

According to Law No. 162/2020 On Public Procurement, the general principles of public procurement are primarily established in Article 3 and form the foundation upon which the entire procurement process is conducted. The law stipulates that all procurement procedures must ensure equal treatment and non-discrimination toward economic operators. This requires contracting authorities to avoid unfairly favoring or excluding any entity and to guarantee equal conditions of competition for all participants (Law No. 162/2020, art. 3). Another fundamental principle is transparency, which requires that all stages of the procurement process—from the publication of the tender notice to the award of the contract—be open, properly documented, and accessible to both the public and economic operators. This principle is closely linked to the obligation of publication and the use of electronic procurement systems. The law further emphasizes the principle of proportionality, according to which the requirements, selection criteria, and contractual conditions established by the contracting authority must be appropriate and proportionate to the nature, complexity, and value of the contract.[1]

It is important to note that Article 3 of Law No. 162/2020 On Public Procurement is closely aligned with the principles established in Directive 2014/24/EU, particularly in guaranteeing free and effective competition and prohibiting practices that may distort

[1] Law No. 162/2020. (2020). On public procurement, Article 3. Official Gazette of the Republic of Albania, No. 30, 26 February 2021.

the market or restrict the participation of economic operators. In accordance with the Public Procurement Law, contracting authorities are required to design procedures that encourage the widest possible participation and facilitate the selection of the most economically advantageous offer. A key dimension of this framework is the efficient use of public funds, commonly referred to as achieving "best value for money." This implies that procurement decisions should not be based solely on the lowest price but rather on a comprehensive assessment of quality, cost, and overall benefit. Additionally, the prevention of conflicts of interest and the safeguarding of integrity remain central pillars of the procurement system. Overall, Article 3 encapsulates the core philosophy of public procurement in Albania: a process that must be fair, transparent, competitive, and oriented toward the public interest (Law No. 162/2020, art. 3). The European Commission continues to monitor the implementation of these standards through tools such as the Single Market Scoreboard, which evaluates indicators including the proportion of single-bidder procedures, the speed of decision-making, the use of price-quality criteria, and the participation of small and medium-sized enterprises (SMEs). Data published for 2024 indicate that the EU average for single-bidder procedures was 28%, while the average decision-making time was 74 days. These indicators are significant not only for assessing economic efficiency but also for providing an indirect measure of procedural quality: the more transparent and predictable the system, the lower the risk of restricting competition. In the Albanian context, the European Commission's 2024 country report highlights a decline in the use of the most economically advantageous tender (MEAT) criterion, from 7.3% of procedures in 2022 to 3.6% in 2023, with a corresponding decrease in value from 33.9% to 20.3% (European Commission, 2024). The report also emphasizes the need to strengthen the institutional capacity of contracting authorities, noting that 247 participants from 98 institutions and entities were involved in procurement-related training during 2023 (European Commission, 2023). From a policy perspective, Albania has adopted the National Strategy for Public Procurement 2024–2030, approved by Council of Ministers Decision No. 304 (May 22, 2024), which establishes a framework for further alignment with EU standards. Despite the clear legal framework, practical challenges remain in the implementation of procurement procedures in Albania. The Public Procurement Commission has consistently reviewed complaints submitted by economic operators. Common issues include the application of the standstill period and the effectiveness of remedies, the clarity and predictability of deadlines, the distinction between permissible clarifications and substantive modifications of tenders, the transparency of evaluation criteria, and the prohibition of submitting a new tender under the guise of clarification.

3. **Analysis of the main principles addressed by the Public Procurement Commission in Albania (PPC)**

A more in-depth analysis of selected decisions of the Public Procurement Commission demonstrates how procurement principles are applied in practice. In Decision No. 598/2024, the Commission emphasized the importance of transparency

and the obligation to provide adequate reasoning in administrative decisions. In this case, the absence of sufficient justification was considered a violation of due administrative process, reflecting the requirements set out in Article 12 of the Code of Administrative Procedures (Public Procurement Commission of Albania, 2024a). In Decision No. 667/2024, the Commission linked the principle of legal certainty to the trust of economic operators in procurement procedures (Public Procurement Commission of Albania, 2024b). This interpretation aligns with broader European legal doctrine, which recognizes legal certainty as a fundamental component of the rule of law. Furthermore, in Decision No. 934/2024, the Commission addressed the proportionality of qualification criteria, emphasizing that such criteria must not unjustifiably restrict competition (Public Procurement Commission of Albania, 2024c). This position is consistent with the standards established in Directive 2014/24/EU. Another significant development is reflected in Decision No. 970/2025, where the Commission examined the issue of effective access to administrative remedies. It found that technical failures in electronic procurement systems could undermine this right, thereby engaging the standards of Article 13 of the European Convention on Human Rights (Public Procurement Commission of Albania, 2025). Finally, Decision No. 205/2026 highlights the importance of avoiding excessive formalism and ensuring effective legal remedies. The Commission sought to balance procedural requirements with the need to guarantee substantive protection of the rights of economic operators (Public Procurement Commission of Albania, 2026). Overall, this analysis demonstrates that the jurisprudence of the Public Procurement Commission has evolved toward a more substantive interpretation of due administrative process. The examined decisions indicate a growing effort to balance procedural formalism with the effective protection of economic operators' rights. Nevertheless, further consistency in decision-making and more comprehensive reasoning remain necessary to fully meet rule of law standards.

4. **Comparative review between the Public Procurement Commission interpretation and European case law**

The jurisprudence of the Court of Justice of the EU (CJEU) has played a key role in interpreting the principles of transparency, equality and proportionality in public procurement. One of the most important decisions is the case C-19/00 SIAC Construction, where the Court stressed the importance of transparency and controllability of administrative decision-making. This standard is reflected in the decisions of the CPC, in particular in decision no. 598/2024, where the lack of reasoning was considered a violation of due process. Another key decision is C-496/99 Commission v CAS Succhi di Frutta, where the Court held that any deviation from the announced criteria constitutes a breach of the principle of equality. This principle is reflected in Albanian decisions, such as no. 1441/2024 and no. 365/2026.

4.1 Alcatel Austria (C-81/98): the complaint must be real

The Alcatel Austria judgment, delivered on 28 October 1999, remains the classic starting point for the European understanding of effective remedies. According to the official EUR-Lex summary, the Court stressed that the contract award decision must be open to effective review and that there must be a period before the conclusion of the contract so that the infringements can be stopped in time. This standard justifies the logic of the standstill: without a period of time between the notification of the result and the signing of the contract, the right to complain would be reduced to an after-the-fact formality. In Albanian practice, this rationale is reflected quite clearly in the decisions of the CPC no. 427/2025, no. 490/2025, no. 1849/2025 and no. 202/2026, where the publication of the complaint in the database and the procedural suspension are treated as necessary steps to preserve the effectiveness of the complaint. However, compared to the Alcatel standard, the Albanian weakness lies in the excessive reliance on electronic formalism and in the fact that it is not always clearly stated in the reasoning that the purpose of the suspension is to protect the effective remedy, and not just the mechanical observance of a procedural step.

4.2 Uniplex (C-406/08): time limits must be clear, foreseeable and effective

In the Uniplex case, the Court stressed that a time limit for an appeal left to the discretion of the court or unclear at its starting point is incompatible with the requirement for effective protection. According to the EUR-Lex summary, the time limit must be foreseeable in its effects and cannot be set in such a way as to render the exercise of rights deriving from EU law impossible or excessively difficult. This approach has direct relevance for Albanian practice. The decisions of the CPC no. 1437/2024 and no. 1562/2025 shows that the Commission rigorously checks compliance with the deadlines and formal elements of the complaint. This is necessary for legal certainty, but the comparison with Uniplex suggests that formalism should not be separated from its guaranteeing function. If the operator has had objective difficulties in receiving notification or using the system, as was raised in decision no. 970/2025, then the interpretation of the deadline should be guided by the principle of effectiveness and not only by a sanctioning logic.[2]

4.3 Manova (C-336/12): clarification of documents is permitted, but not substitution of the offer

The Manova case-law is of fundamental importance for the boundary between clarification of documentation and modification of the offer. From the formulation subsequently used in the practice of the EU courts, the principle of equal treatment does not prohibit the correction or completion of the tender data when it comes to a necessary clarification and when the requested document confirms a situation existing before the deadline, for submission; but it does not allow the submission of a document or element that actually transforms the tender after the deadline

[2] *Uniplex (UK) Ltd v NHS Business Services Authority*, Case C-406/08 (Court of Justice of the European Union, January 28, 2010).

(Uniplex (UK) Ltd v NHS Business Services Authority, 2010). This logic helps to read the Albanian decisions. 365/2026, no. 343/2026 and no. 904/2025 on the burden of proof and supporting documents. The Public Procurement Commission in Albania, in these cases, has emphasised the need for the claims and documents to be sufficient and submitted regularly. However, the Manova standard would require that the reasoning be more clearly distinguished: when we are dealing with a permissible clarification and when with a prohibited substitution. It is precisely this analytical division that would make the Albanian practice more consistent and closer to the acquis.

4.4. Pippo Pizzo (C-27/15): exclusion on grounds not expressly stated in advance is not permitted

In the Pippo Pizzo case, the Court of Justice reiterated that transparency and equal treatment require that the conditions for participation and the possible grounds for exclusion be set out clearly, precisely and unequivocally in the procedure documents. An operator cannot be excluded on the basis of a hidden, implicit or revealed interpretation only after the submission of the tender (Pippo Pizzo v CRGT Srl, 2016). This standard is directly linked to the PPC decisions. 934/2024, no. 1063/2025 and no. 1065/2025, where the Public Procurement Commission in Albania intervened on tender criteria and their proportionality. The similarity is clear: in Albanian practice, too, it is accepted that criteria must be objective and not unduly restrict competition. The difference is that the Pippo Pizzo case-law raises transparency to an even stronger standard of normative foreseeability. For this reason, Albanian contracting authorities should avoid not only excessive criteria, but also any vague wording that allows for selective exclusion or arbitrary assessment.

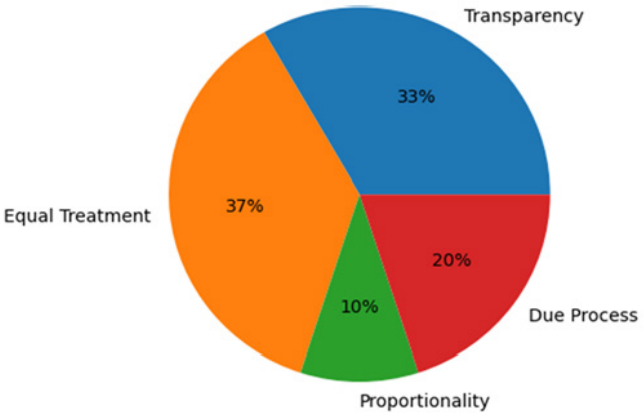
4.5 Archus and Gama (C-131/16): clarification cannot turn into a secret negotiation

In the Archus and Gama judgment, the Court clarified that a request for clarification cannot be used to allow an operator to submit, in essence, a new tender. This is a red line that protects equal treatment. Even when the contracting authority tries to clarify uncertainties, it cannot create an opportunity (Archus and Gama, 2018).[3]

From the analysis of 30 decisions of the Public Procurement Commission, it results that the main problems are related to:

1. Lack of reasoning in decisions;
2. uneven application of criteria;
3. excessive formalism in the review of complaints;
4. Limitations in effective access to administrative appeal;

[3] *Archus and Gama*, Joined Cases C-523/16 & C-536/16 (Court of Justice of the European Union, February 28, 2018).



Source: Public Procurement Commission (KPP)

In the EU, European Commission statistics show that over 60% of complaints are related to transparency and equality (European Commission, Public Procurement Report 2023). These data confirm a similar trend to that of Albania.

Table 1: Complaints in PPC during the last 5 years

Year	Total Complaints	Transparency	Equal Treatment	Proportionality	Due Process
2020	3	1	1	0	1
2021	4	1	2	0	1
2022	5	2	2	1	0
2023	5	2	2	0	1
2024	5	2	1	1	1
2025	4	1	2	0	1
2026	4	1	1	1	1

Source: Public Procurement Commission (KPP)

From the above data, it results that the Equal Treatment of Economic Operators is the principle most violated in administrative procedures in Albania during the last 5 years. In second place is transparency, the lack of which has been identified in 33% of cases. The lack of transparency is a systemic problem in documents and procedures. Problems with the procedure and the reasoning of the decisions of the contracting authorities are found in 20% of cases, and the violation of the principle of proportionality is found in 10% of cases, which has been identified in some technical criteria set by the contracting authorities in the tender document.

5. Reforming Albanian practices to guarantee procurement principles

The reform in the field of public procurement in Albania constitutes one of the essential components of the European integration process and the consolidation of the rule of law. In this context, the assessments carried out by international organisations and the institutions of the European Union highlight considerable progress in the formal approximation of legislation with the acquis communautaire, but at the same time highlight persistent shortcomings in the practical implementation of this normative framework. These shortcomings are closely related to the fundamental principles of due administrative procedure, including the reasoning of decisions, legal certainty, transparency and the effectiveness of legal remedies.

One of the most important issues emerging from the reports of the European Commission is the quality of the reasoning of administrative decisions in public procurement procedures. The reasoning of decisions is not only a formal requirement, but an essential element of the rule of law, which guarantees effective control of decision-making and enables the exercise of the right to appeal. In this regard, the progress reports for Albania highlight that the decisions of contracting authorities and review bodies are often characterised by an insufficient level of legal and factual reasoning, thus limiting transparency and institutional accountability. This issue is also directly linked to the standards developed in the case law of the European Court of Human Rights, which has stressed the importance of reasoning as a component of the right to a fair trial under Article 6 of the ECHR.

Along the same lines, the lack of a unified practice of administrative review bodies constitutes another important challenge. In particular, the practice of the Public Procurement Commission has been criticised for a lack of consistency in the interpretation and application of the law, which creates legal uncertainty and undermines the principle of equal treatment. [4]In a system where administrative decisions should be predictable and based on consistent standards, the lack of a consolidated administrative jurisprudence constitutes a serious obstacle to the effective functioning of the public procurement market. The SIGMA program has repeatedly emphasised that consistency of decision-making is a key element for increasing the trust of economic operators and ensuring fair competition.

Another important dimension is related to the functioning of complaint mechanisms and, in particular, their digitalisation. SIGMA and World Bank analyses highlight the need to improve electronic complaint systems, which are currently not fully utilised to ensure an efficient and transparent process[5]. Electronic systems have the potential to reduce administrative costs, speed up procedures and increase economic operators' access to legal remedies. However, to achieve these benefits, continued investment in technological infrastructure is required, as well as the development of human capacities for their use.

From a legal harmonisation perspective, Albania has made important steps towards approximation with European Union standards, in particular with Directive

[4] European Commission, ibid.; SIGMA, Public Procurement Review: Albania, OECD, Paris, 2022.

[5] SIGMA, ibid.; World Bank, Public Procurement in Investment Project Financing: Goods, Works, Non-Consulting and Consulting Services, 7th ed., Washington DC, 2025.

2014/24/EU and Directive 2014/25/EU. These directives set advanced standards for transparency, competition and efficiency in public procurement, including principles such as proportionality, equal treatment and non-discrimination. However, the main challenge remains not only the formal transposition of these standards into national legislation, but also their effective implementation in practice. In this regard, international reports highlight that there is a gap between law and practice, which needs to be addressed through strengthening institutions and increasing professionalism in public administration.

At the national level, the Public Procurement Agency's analyses confirm these findings, identifying a number of issues related to the implementation of procedures, the interpretation of the law and institutional capacities. These analyses show that, despite improvements in the legal framework, the main challenges remain at the operational level, including the lack of standardisation of procedures and the need for continuous staff training.

An important aspect that emerges from these assessments is the link between public procurement and the principles of due administrative process. In this sense, the quality of reasoning of decisions, consistency of practice and the effectiveness of appeal mechanisms are not only technical issues, but essential elements of guaranteeing the procedural rights of economic operators. These elements are closely linked to the concept of "good administration", which has been developed in European Union law and includes the right to be heard, the right to a reasoned decision and the right to effective legal remedies.

When Albanian decisions are read in the light of EU jurisprudence, the picture that emerges is essentially positive, but incomplete. At a principled level, the CPC has built a decision-making language that regularly refers to transparency, equality, legal certainty and proportionality. This is seen in decision no. 598/2024, no. 667/2024, no. 1838/2024, no. 383/2025 and no. 113/2026, where the procedural violation is related not only to the individual interest of the operator, but also to the violation of the integrity of the procedure itself. This approach is in harmony with the logic of the EU, according to which public procurement is not simply a market, but also a segment of the rule of administrative law. Equally noticeable is the Albanian approach to the European standard in the field of tender documents. In decisions no. 934/2024, no. 1063/2025 and no. 1065/2025, the CPC has accepted that the criteria must be objective, linked to the subject matter of the contract and not unduly restrict competition. This is very close to the approach of Directive 2014/24/EU and the Pippo Pizzo jurisprudence. However, what is often missing is a more articulated test of proportionality: was the criterion appropriate, necessary and balanced? Instead, the reasoning sometimes remains at a declarative level.

The area where the comparison reveals the biggest gap is the effectiveness of the appeal. The Alcatel and Uniplex jurisprudence conceive the right of appeal as a right that must be genuinely available in a timely manner, with clear notice, foreseeable deadlines and meaningful suspension. In Albania, decisions no. 427/2025, no. 490/2025, no. 1849/2025 and no. 202/2026 show that the system recognises the publication of the complaint and the procedural suspension. But decisions no. 970/2025 and no.

205/2026 expose that technical difficulties of the electronic system or excessive reliance on digital channels can weaken this guarantee. It is here that the EU standard is more demanding: the procedure is not enough to exist in law; it must function in practice without making the complaint excessively difficult. Another interesting comparison concerns the reasoning behind decisions. The academic literature on transparency in procurement emphasises that the obligation to provide sufficient reasons for the exclusion or evaluation of offers is a prerequisite for effective complaint. In this respect, Albanian practice is moving in the right direction, especially in decision no. 598/2024 and no. 365/2026, but would benefit significantly from using a more standard reasoning structure: relevant facts, applicable norm, application of the norm to the facts, and an express response to each of the appellant's main claims. This would make the decision-making more verifiable and more resistant to charges of arbitrariness.

6. **Conclusions and recommendations**

The first improvement in Albanian practices should aim at strengthening the standard of reasoning of administrative decisions in procurement. Albanian law and the Code of Administrative Procedures recognise the obligation to state reasons, but practice shows that the quality of the reasoning varies from one case to another. It would be appropriate to adopt a standard reasoning model for contracting authorities and the PPC, similar to the logic of EU case law: identification of the claim, summary of evidence, relevant norm, proportionality analysis and conclusion. Such a standard would increase transparency and give economic operators a real opportunity to understand why they won or lost.

The second improvement is related to deadlines and effective notification. Following the logic of Uniplex, legislation and sub-legal practice should further clarify not only the length of the appeal deadline, but especially the moment of its commencement, the manner of proof of notification and the treatment of cases when the electronic platform has functional problems. There should be a mandatory fallback protocol for notification, in order to avoid any debate as to whether or not the operator has actually had the opportunity to react.

The third improvement concerns the clarification of the boundary between permissible completion of documentation and prohibited transformation of the tender. In line with Manova and Archus, the PPA and the PPC should issue interpretative guidelines that clearly distinguish three situations: permissible technical clarification; submission of a document proving a pre-existing situation; and substantial modification of the tender, which should be prohibited. Such guidance would help reduce unequal practices between contracting authorities and increase predictability for operators.

The fourth improvement should focus on the drafting of tender documents. The decline in the use of the most economically advantageous tender criterion in Albania, as evidenced by the European Commission, suggests that the system still relies too much on price logic and less on quality. This not only limits qualitative competition but may push authorities towards rigid formal criteria that subsequently generate

complaints.

The fifth improvement should be institutional and statistical. Albania has already adopted the National Strategy for Public Procurement 2024–2030, but to truly measure approximation with the EU, regular and public performance indicators, comparable to the Single Market Scoreboard, are needed. In addition to classic statistics on the number of procedures and the value of contracts, data on the average duration of complaints, the percentage of decisions annulled or amended, the most frequent reasons for disqualification, the number of procedures with a single bidder and the use of MEAT criteria should be published periodically. Without such a database, the reform risks remaining declarative.

The jurisprudence of the European Union shows that the due administrative process in public procurement is not reduced to the formal observance of certain deadlines or forms. It requires that the economic operator clearly knows the rules of the game, is not excluded on the basis of criteria not previously formulated, has a real opportunity for clarification only within the limits of equality of treatment, and enjoys a means of appeal that is actually usable before the contract becomes irrevocable. The Albanian practice of the PPC suggests that these standards are already part of the domestic legal language. However, full approximation to the European acquis requires three additional things: more structured reasoning, limiting the formalism that undermines the effectiveness of the appeal, and wider use of proportionality analysis. If these three elements are combined with the national strategy 2024–2030 and with a better system of statistics and training, Albania can move from a largely reactive model of legality control to a preventive and European model of public procurement governance.

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