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## Article

# Transparency in public procurement: The case of Slovenia

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## TRANSPARENCY IN PUBLIC PROCUREMENT – THE CASE OF SLOVENIA

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### Abstract

Public procurement is one of the key points of contact between public administration and the economy, while the amount of public resources is a possible source of conflict of interest and corruption. The article aims to contribute to improvements in public procurement legislation and practice. The article examines the practice of supervisory bodies and assesses the frequency of violations of the principle of transparency. The main findings of the article are that over the years of application of the Public Procurement Act in versions ZJN-2 and ZJN-3, the number of violations of the basic principle of transparency increased – the most frequent violations concerning discriminatory criteria set by the contracting authorities and their implementation in the selection phase – and that local municipal bodies violated the principle of transparency more often than state bodies.

### Keywords

Public Procurement, Supervision, Central Government, Municipalities, Principle of Transparency

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### I. Introduction

Transparent, fair and competitive public procurement generates business opportunities and contributes to economic growth and job creation on the single European market. Public procurement is one of the key points of contact between public administration and the economy. Effective public procurement is in the interest of both the public and the private sectors, as it results in savings of government resources and increased trust of private individuals in the state and its institutions. This can lead to increased cooperation between the two spheres and a larger welfare state.<sup>4</sup>

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<sup>4</sup> Otter & Weber (2015).

The amount of resources spent through public procurement is a potential source of conflict of interest and corruption.<sup>5</sup> In the European Union (EU), around 30% of all public spending is intended for the payment of outsourced work, which at the annual level amounts to approx. EUR 2,000 billion or 14% of the EU GDP.<sup>6</sup>

Such large amount of funds calls for well-considered spending decisions and for maximum efficiency and effectiveness of public spending, which in this context also means avoiding mistakes, fraud and corruption (*ibid.*). The tools to achieve this are known, but their use in practice is a problem. This also applies to the principle of transparency in public procurement, which is one of the fundamental principles intended to contribute to the objectives outlined above.<sup>7</sup>

In Slovenia, approx. EUR 4 billion is spent through public procurement every year, which accounts for around 40% of the national budget expenditure.<sup>8</sup> Since Slovenia was severely affected by the financial and economic crisis, the need for a more rational use of public money was strengthened even further.<sup>9</sup> An effective means to reduce expenditure is transparent public procurement. The regulation on public procurement in Slovenia is often and rapidly changed,<sup>10</sup> which can result in an increased number of violations of the principle of transparency, especially if the administrative capacity of those implementing the regulations is low and austerity measures affect training of civil servants.<sup>11</sup> On the other hand, changing legislation is the regulator's response to the established violations and eventually should lead to better regulation. Additionally, one may expect that activities of National Review Commission and of Court of Audit would improve administrative practice and thus reduce the volume of violations of legislation.<sup>12</sup>

In view of the above, the aim of the article is to contribute to improvements in public procurement legislation and practice. The objectives of the article are to analyse the practice of supervisory bodies, to assess the frequency of violations of the principle of transparency and to propose improvements in legislation and practice.

In order to achieve the aim and objectives and based on the above presented development in Slovenia, the following hypotheses were put forward and tested:

1. The number of violations of the principle of transparency decreased over the years.
2. Most violations of the principle of transparency relate to the fact that no contract notice is published on the public procurement portal.
3. Municipal bodies violate the principle of transparency more often than state bodies.
4. Proportion of violations at the municipal and national level are related.

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<sup>5</sup> Kaštelan Mrak et al. (2016).

<sup>6</sup> European Commission (2017).

<sup>7</sup> Halonen (2016).

<sup>8</sup> Ministry of Public Administration (2016).

<sup>9</sup> Mencinger & Aristovnik (2014).

<sup>10</sup> See Chapter III, Figure 1.

<sup>11</sup> See e.g. Rakar & Virant (2019), Haček & Bačlija (2014), Haček & Bačlija (2009), Court of Audit decision No. 324-11/2014/39.

<sup>12</sup> For instance, in the period 2008–2015 the National Review Commission took 3,259 decisions.

The paper is structured in such a way that the second chapter presents the principle of transparency of public procurement and the elements thereof, the third chapter specifies the legal framework governing public procurement in the EU and Slovenia, the fourth chapter indicates the cases of violation of the principle of transparency in public procurement procedures in Slovenia, the fifth chapter provides an analysis of the results of the survey, the sixth chapter verifies the hypotheses, while the final chapter presents the findings and suggestions for improvement.

## II. Transparency of public procurement

The principle of transparency is one of the key principles of public procurement. Without a transparent public procurement procedure, the remaining principles – such as equal treatment, non-discrimination in the contracting authority’s requirements and, most important, economy – cannot be efficiently pursued. Moreover, transparency also allows public access to information, which is a form of supervision and thus a means for enforcing the legislation.<sup>13</sup> According to a survey conducted by the European Commission<sup>14</sup> on performance in key aspects of public procurement, Slovenia ranks among the countries where the value-for-money ratio is the lowest (Table 1).

**Table 1: Country performance rankings by indicators**

Indicators / Country	One bidder	No calls for bid	P.rate	Cop. Proc.	Award Criteria	D.speed	Missing values	Missing calls for bids	Missing reg.n.
Belgium									
Bulgaria									
Czech Republic									
Denmark									
Germany									
Estonia									
Ireland									
Greece									
Spain									
France									
Croatia									
Italia									
Cyprus									
Latvia									
Lithuania									

*Continued on next page*

<sup>13</sup> Basta Trtnik et al. (2016, pp. 180–181).

<sup>14</sup> European Commission (2017).

Indicators / Country	One bidder	No calls for bid	P.rate	Cop. Proc.	Award Criteria	D.speed	Missing values	Missing calls for bids	Missing reg.n.
Hungary									
Malta									
Netherlands									
Austria									
Poland									
Portugal									
Romania									
Slovenia									
Slovakia									
Finland									
Sweden									
Great Britain									
Iceland			n/a						
Norway			n/a						

Source: European Commission (2017)

Legend of performance level:

<i>Unsatisfactory</i>
<i>Average</i>
<i>Satisfactory</i>
<i>n/a</i>

Table 1 shows that Slovenia performs unsatisfactory in 6 out of 9 indicators.<sup>15</sup> According to the methodology of the European Commission's survey, Slovenia's overall performance suggests purchasers don't get good value-for-money, since its overall result is below 80%. Namely, overall performance is a weighted average of all 9 performance indicators and results are classified into three groups: 1) above 90%, 2) 80%–90% and 3) below 80%.<sup>16</sup> According to the European Commission's survey, only three indicators (i.e. Missing Values, Missing Calls for Bids and Missing Registration numbers) concern transparency, while indicator No. 2 (No calls for Bids) serves several aspects of procurement, including transparency.<sup>17</sup> If we compare this classification with Slovenian public procurement legislation, we get the following result (Table 2).

<sup>15</sup> The colour thresholds have been set on the basis of two factors: 1) qualitative policy judgment on what is good practice and 2) recent data for individual countries (see European Commission, 2017, pp. 2–3).

<sup>16</sup> European Commission (2017, p. 4).

<sup>17</sup> European Commission (2017, p. 4).

**Table 2: Public procurement transparency indicators**

No.	Indicator	Weighting	Principle (Slovenian legislation)	Result for Slovenia	
				%	Performance level
1.	One Tenderer (proportion of contracts awarded where there was just one tenderer)	3	competition		Unsatisfactory
2.	No Calls for Tenders (proportion of procurement procedures that were negotiated with a company without a call for tenders)	3	transparency	2015: 19% 2016: 15%	Unsatisfactory
3.	Publication Rate (proportion of public procurement advertised to businesses)	3		2015: 5.6% 2016: n/a	Average
4.	Cooperative Procurement (proportion of procurement procedures with more than one public buyer)	1	economy, effectiveness and efficiency		Unsatisfactory
5.	Award Criteria (proportion of procedures which were awarded only on the basis of lowest price)	1	proportionality, economy, effectiveness and efficiency		Satisfactory
6.	Decision Speed (time between the deadline for receiving offers and the award of the contract)	1	economy, effectiveness and efficiency		Satisfactory

*Continued on next page*

No.	Indicator	Weighting	Principle (Slovenian legislation)	Result for Slovenia	
				%	Performance level
7.	Missing Value (proportion of contracts awarded without sufficient information about the value)	1/3	transparency	2015: 4% 2016: 19%	Satisfactory
8.	Missing Calls for Tenders (proportion of contract awards for which a call for tenders took place, but it is not clear what the name of the call was or what the conditions were)	1/3		2015: 4% 2016: 19%	Unsatisfactory
9.	Missing Registration Number (proportion of procedures where the registration number was not included)	1/3		2015: 100% 2016: 27%	Unsatisfactory

Source: European Commission (2017)

As shown by Table 2, of the nine indicators analysed by the European Commission, five fall under the principle of transparency of public procurement according to Slovenian legislation, while the remaining four fall under other principles, in particular the principle of effectiveness.

Additionally, the indicators used in the European Commission's survey have different weightings for the purpose of the overall performance assessment: the first three indicators, which are deemed as the most important ones, since each of them reflects several aspects of public procurement (One Bidder, No Calls for Bids and Publication Rate) are triple-weighted. The last three indicators, which concern transparency (Missing Values, Missing Calls for Bids and Missing Registration numbers), have been given a one-third weighting.<sup>18</sup> As regards these three indicators, Slovenia scored very low at two of them (8 and 9). Yet,

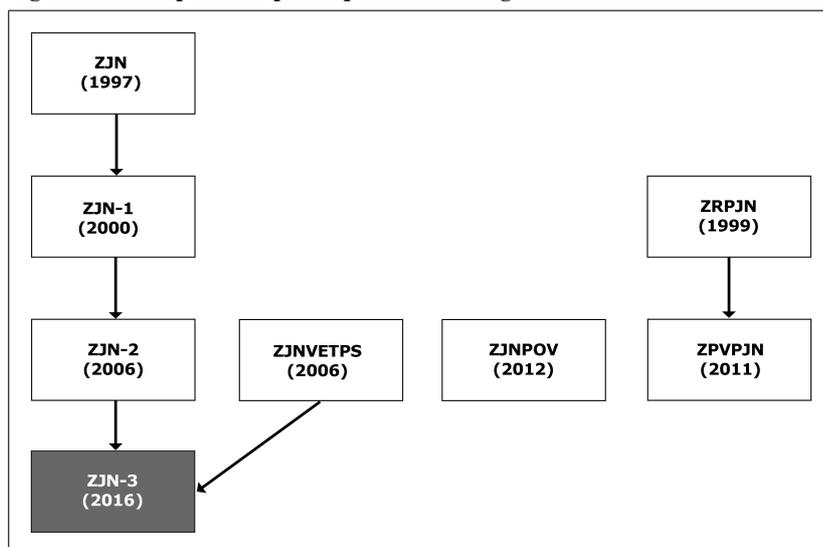
<sup>18</sup> For a detailed presentation of the methodology see special technical document, retrieved 13 Sep 2019 from [http://data.europa.eu/euodp/repository/ec/dg-grow/mapps/TED\\_advanced\\_notes.pdf](http://data.europa.eu/euodp/repository/ec/dg-grow/mapps/TED_advanced_notes.pdf).

considering the five indicators that fall under the principle of transparency according to Slovenian understanding, Slovenia's scores are unsatisfactory for three indicators (2, 8 and 9), average for one (3), and satisfactory for one indicator (7).

### III. Legal regulation of public procurement

At the EU level, public procurement is mainly regulated by Directive 2014/24/EU and Directive 2014/25/EU. On the basis thereof, Slovenia adopted the current version of the Public Procurement Act (ZJN-3), which entered into force on 1 April 2016 and replaced the previously applicable ZJN-2 and Act Regulating Public Procurement in the Water, Energy, Transport and Postal Services Sectors<sup>19</sup>(ZJNVETPS) (Figure 1).<sup>20</sup>

Figure 1: Development of public procurement legislation in Slovenia



Source: authors based on legislation

In addition to the ZJN-3, public procurement is also regulated by the Legal Protection in Public Procurement Procedures Act (ZPVPJN)<sup>21</sup> and the Public Procurement for Defence and Security Act (ZJNPOV)<sup>22</sup>.

<sup>19</sup> Official Gazette of RS, No. 72/11.

<sup>20</sup> In addition to the above, the ZJN-3 transposed into Slovenian legislation also Council Directive 89/665/EEC of 21 December 1989 on the coordination of the laws, regulations and administrative provisions relating to the application of review procedures to the award of public supply and public works contracts and Council Directive 92/13/EEC of 25 February 1992 coordinating the laws, regulations and administrative provisions relating to the application of Community rules on the procurement procedures of entities operating in the water, energy, transport and telecommunications sectors.

<sup>21</sup> Official Gazette of RS, No. 43/11.

<sup>22</sup> Official Gazette of RS, No. 90/12.

### **Changes brought by the ZJN-3 in relation to transparency**

In addition to implementing the above directives, the ZJN-3 was intended to simplify procedures and increase the legal certainty of stakeholders in public procurement procedures. According to its proposer, the new legislation would also make it easier to manage and increase effectiveness and save time and money for both the contracting authorities and the tenderers.<sup>23</sup>

As regards transparency of public procurement, the ZJN-3 introduced some important changes compared to the ZJN-2. Article 21 of the ZJN-3<sup>24</sup> increases the transparency of minor contracts by obliging the contracting authority to publish annually, by the last day of February, on its website or on the public procurement portal a list of public contracts awarded in the previous year with a value estimated to be less than the thresholds and equal to or greater than EUR 10,000 net of VAT.

The ZJN-3 brings changes as regards the entitled persons, the time limits, and the scope of access to tenders. The request to access the tender of the selected tenderer may be filed only by tenderers that submitted admissible tenders and which were not excluded as inadmissible.<sup>25</sup> Access must be concluded before the expiry of the time limit for filing a request for review, which under the ZJN-2 was only possible if the tenderer claimed an alleged violation of the law. The ZJN-3 removed the provision that obliged the contracting authority to inform the tenderers about their tenders being subject to access and communicate to them the time and place of access, thus allowing them to be present at the consultation of their tenders in order to protect their interests.<sup>26</sup> Likewise, the ZJN-3 removed the provision of Article 79 of the ZJN-2 which gave the tenderers the possibility to file a request for additional explanation of the decision on the award of contract.<sup>27</sup>

In order to speed up the procedure and minimise administrative burden, Article 90 of the ZJN-3 provides that the contracting authorities inform the tenderers through the public procurement portal, and that a decision is deemed served with the day it is published on the public procurement portal.

## **IV. The principle of transparency in practice**

In order to test the hypotheses, a research was carried out. The research covered the period of application of the ZJN-2 (2008–2015) and the beginning of application of the ZJN-3 (2016). The subject of research were 3259 decisions by the National Review Commission (hereinafter: NRC) and the Court of Audit.

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<sup>23</sup> Government of the Republic of Slovenia (2015).

<sup>24</sup> Article 24 of the ZJN-2.

<sup>25</sup> Article 35 of the ZJN-3.

<sup>26</sup> Ravnikar Šurk (2016, p. 55).

<sup>27</sup> Jeršič, (2016, p. 168).

**Violation of the principle of transparency in 2008–2015**

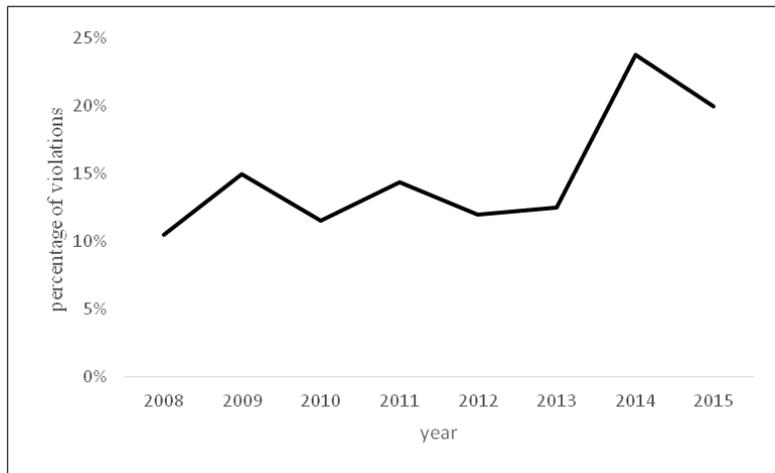
This subchapter presents the results of the analysis of violation of the principle of transparency in public procurement procedures. The analysis covered the decisions issued by the NRC and the Court of Audit in the period 2008–2015 and – for the purposes of verification – also in 2016 when the ZJN-3 entered into force. Only the decisions granting the tenderers’ requests for review were considered. The requests were classified into three categories, depending on whether the NRC granted the request fully or in part, or whether the contracting authority’s decision to select a tenderer was repealed.<sup>28</sup>

**Table 3: Violations of the principle of transparency, 2008–2015**

Year	2008	2009	2010	2011	2012	2013	2014	2015
Total requests	244	365	401	537	505	523	353	330
Requests denied	130	205	219	280	288	329	227	200
Requests granted	114	160	182	257	217	184	126	130
Number of violations of the principle of transparency	12	24	21	37	26	23	30	26
% (Number of violations / Requests granted)	10.53	15.00	11.54	15.18	11.98	12.50	23.81	20.00

Source: authors based on own analysis

**Figure 2: Trend of violations of the principle of transparency**



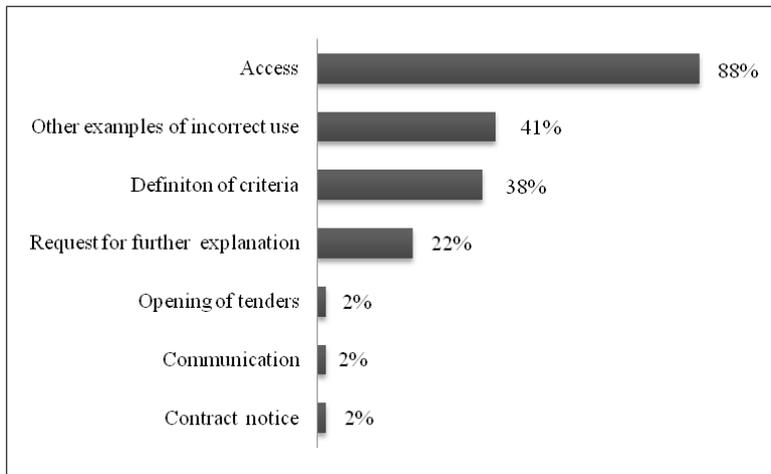
Source: authors based on own analysis

<sup>28</sup> National Review Commission for Reviewing Public Procurement Award Procedures, (2011).

### Analysis of the cases of misapplication of individual elements of the principle of transparency

This subchapter focuses on the most frequent misapplications of the elements of the principle of transparency. The following elements were analysed: publication of contract notice, communication, definition of criteria and their implementation in the selection phase, opening of tenders, access, request for additional explanation, publication of contract award notice.

**Figure 3: Proportions of cases of misapplication of the elements of the principle of transparency throughout the period under consideration**



*Source: authors based on own analysis*

The Figure 3 shows that, in practice, the most commonly misapplied element is access to other tenders, followed by other examples of incorrect use, which are not listed in the ZJN-2 (i.e. other cases, such as changing the contract value, changing the tender after the deadline for submission), and the definition of criteria and their implementation in the selection phase. Access to other tenders gives the tenderers a competitive advantage in similar public procurement procedures in the future, which is why they often used this option and filed requests for access. However, most likely in light of possible lawsuits for the disclosure of business secrets (in fact, the tenderers tend to classify the whole or most of the tender as business secret), the contracting authorities denied access even to the part of the tender documentation that is deemed by law to be public information.

### Analysis of violations of the principle of transparency by contracting authority

This subchapter analyses the violations of the principle of transparency by contracting authority at the state and municipal levels. The state level includes the bodies of the Republic of Slovenia (ministries, bodies within the ministries, government offices, administrative units, etc.), while the local municipal level includes local administration bodies.

The following cases were deemed violations of the principle of transparency: failure to publish a contract notice; misapplication of the principle of transparency in communication (the contracting authorities failed to reply to the questions of non-selected tenderers, etc.); non-transparent definition of criteria and their implementation in the selection phase; irregularities in opening the tenders (some tenders were not even opened, some late tenders were taken into account, records on tender opening were not presented or were presented after the expiry of the legally provided deadline); preventing access to the tender of the selected tenderer (mainly because the tenderers wrongfully classified parts of the tender as business secrets); contracting authorities' failure to reply to requests for additional explanation; failure to publish a contract award notice (the contracting authorities either fail to publish their decision or the publication is incomplete); other violations (e.g. changing the tender after the expiry of the deadline for submission, concluding annexes for the value of additional works exceeding the initial contract by more than 30%, incorrect or inadmissible public contract procedure, failure to exclude incomplete tenders, etc.).

**Table 4: Violations of the principle of transparency at the municipal level**

Year	2008	2009	2010	2011	2012	2013	2014	2015	period 2008–2015
<b>Requests granted</b>	62	45	37	38	49	44	19	21	253
<b>No. of violations</b>	5	6	4	8	7	4	5	4	43
<b>%</b>	8.06	13.33	10.81	21.05	14.29	9.09	26.32	19.05	17.00

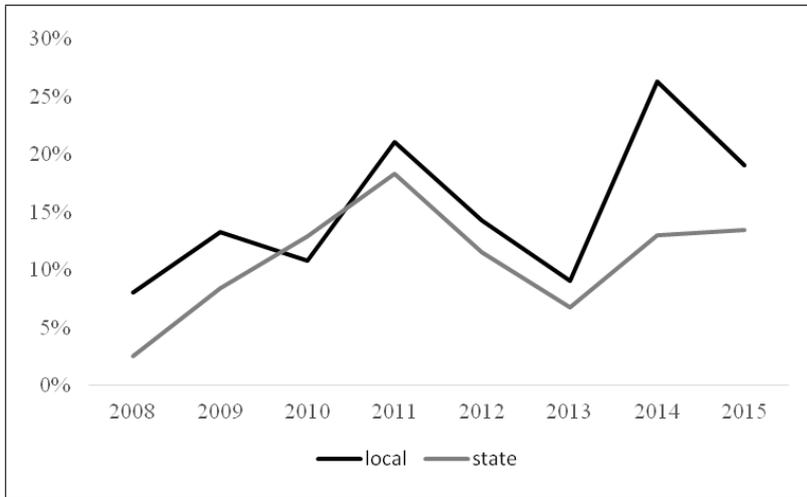
Source: authors based on own analysis

**Table 5: Violations of the principle of transparency at the state level**

Year	2008	2009	2010	2011	2012	2013	2014	2015	period 2008–2015
<b>Requests granted</b>	39	59	31	49	26	44	23	37	308
<b>No. of violations</b>	1	5	4	9	3	3	3	5	33
<b>%</b>	2.56	8.47	12.90	18	11.54	6.82	13.04	13.51	10.71

Source: authors based on own analysis

As shown by Tables 4 and 5, the principle of transparency was more often violated at the municipal than at the state level. This is probably due to lower administrative capacity or difference between the actual and the optimal number of employees. Considering the study by Haček & Bačlija (2014), over 50% of the local communities have an administrative capacity that is below the average.

**Figure 4: Proportion of violations of the principle of transparency at the state and municipal levels by year**

Source: authors based on own analysis

### Statistical analysis of violations at the municipal and state level

In this subchapter we focus on the statistical characteristics of violations at the national and at the municipal levels. We were wondering whether there may be a correlation between the two variables (proportion of violations at municipal and state levels during the analysed time period). Furthermore, we were wondering if both proportions significantly increased during the analysed period. For this purpose, we fitted two regression models, where time was an independent variable (for both models) and proportion of violations on both levels were responses. Statistical test for the regression coefficient gives us the answer if its value significantly differs from 0, i.e. from no effect.

Tables 6, 7 and 8 show the results of regression analysis with time as independent variable and proportion of violations at the municipal level and the dependent variable in Tables 6 and 7 summarize the regression model while the Table 8 provides us with statistical properties of the regression coefficient.

**Table 6: Summary of regression model**

Model Summary				
Model	R	R Square	Adjusted R Square	Std. Error of the Estimate
1	0.594 <sup>a</sup>	0.353	0.245	0.05538

Source: authors based on own SPSS program analysis

a) Predictors: (Constant), year

**Table 7: Anova**

ANOVA <sup>a</sup>					
Model	Sum of Squares	df	Mean Square	F	Sig.
Regression	0.010	1	0.010	3.273	0.120 <sup>b</sup>
Residual	0.018	6	0.003	/	
Total	0.028	7	/		

Source: authors based on own SPSS program analysis

a) Dependent Variable: proportions of violations at the local municipal level

b) Predictors: (Constant), year

**Table 8: Coefficients**

Model	Unstandardized Coefficients		Standardized Coefficients	t	Sig.
	B	Std. Error	Beta		
(Constant)	-30.946	17.190	/	-1.800	0.122
year	0.015	0.009	0.594	1.809	0.120

Source: authors based on own SPSS program analysis

Note: Dependent Variable: proportions of violations at the municipal level

The analysis was carried out through statistical tests in correlation and regression. From Table 6, we can deduce that the regression model explains 35.3% of the variance of the proportions of violations. Consequently, the remaining 64.7% of the phenomenon cannot be explained with the analysed variables (in our case time). From Table 7 (Anova) we see that the model regression model is not statistically significant. ( $p = 0.120$ ,  $\alpha = 5\%$ ), i.e. the independent variable (time) has no significant influence on the response variable (proportion of violations and municipal level). Table 8 with regression coefficients also supports previous findings. Although the regression coefficient is positive (0.015), which means that the number of violations at the municipal level averages an average of 1.5 percentage points, the increase was not statistically significant ( $p = 0.12$ ). Similarly, Tables 9, 10 and 11 summarize regression model with time as independent variable and the proportion of violations at the state level as the response. The results are presented in the same form as Tables 6, 7 and 8, but for different response variable.

**Table 9: Regression model**

Model Summary				
Model	R	R Square	Adjusted R Square	Std. Error of the Estimate
	0.449 <sup>a</sup>	0.201	0.068	0.04667

Source: authors based on own SPSS program analysis

a) Predictors: (Constant), year

**Table 10: Anova state level**

ANOVA <sup>a</sup>					
Model	Sum of Squares	df	Mean Square	F	Sig.
Regression	0.003	1	0.003	1.513	0.265 <sup>b</sup>
Residual	0.013	6	0.002	/	
Total	0.016	7	/		

Source: authors based on own SPSS program analysis

a) Dependent Variable: proportions of violations at the state level

b) Predictors: (Constant), year

**Table 11: Coefficients state level**

Coefficients <sup>a</sup>					
/				/	
	B	Std. Error	Beta		
(Constant)	-17.709	14.485	/	-1.223	0.267
year	0.009	0.007	0.449	1.230	0.265

Source: authors based on own SPSS program analysis

a) Dependent Variable: proportions of violations at the state level

Then, in Table 9, we repeated statistical tests, this time we took as a dependent variable the number of violations at the state level, but the results did not differ in any way from the previous tests. The proportion of the explained variance equals 20.10, which means that unexplained variance remains almost 80%. We also found in Table 10 that this model is not statistically significant ( $p = 0.265$ ), and in Table 11 that the annual increase of 9 percentage points of violations at the state level is not statistically significant. The other analysis we performed in the paper was correlation analysis. We examined the correlation between the proportions of violations on state level and municipal level. The result is in the Table 12.

**Table 12: Pearson correlation test**

Correlations		Municipal level	State level
Mun. level	Pearson Correlation	1	0.731*
	Sig. (2-tailed)	/	0.025
	N	9	9
State level	Pearson Correlation	0.731*	1
	Sig. (2-tailed)	0.025	/
	N	9	9

Source: authors based on own SPSS program analysis

Remark: Correlation is significant at the 0.05 level (2-tailed).

In Table 12, however, a correlation analysis was carried out to find that there is a high/strong correlation between the number of violations at the state level and the number of violations at the municipal level ( $r = 0.731$ ), which is statistically significant ( $p = 0.025$ ). It means that proportions of the violations on state and municipal level are related: in the years where proportion was low on municipal level, it was low on state level as well. And vice versa, when the proportion on the municipal level was high, it was high on state level.

## V. Testing the hypotheses

Before starting with the analysis, the following hypotheses were put forward:

1. The number of violations of the principle of transparency decreased over the years.
2. Most violations of the principle of transparency relate to the fact that no contract notice is published on the public procurement portal.
3. Municipal bodies violate the principle of transparency more often than state bodies.
4. Number of violations at municipal and national levels are related.

For the verification of hypotheses, we used our own analysis of NRC reports and statistical tests. Hypothesis 1, 2 and 3 were proved through the analysis of NRC, and hypothesis 4 was proved through a statistical test.

For the method of our own analysis of NRC decisions, we decided based on the following criteria:

- \* The NRC and the Court of Audit are the most referential institutions for assessing the regularity of public procurement procedures. NRC decisions are based on assessed compliance with the legal provisions relating to public procurement, and the subjectivity factor is minimal;
- \* The authors' own analysis of NRC decisions covers a longer period (2008–2016) and the sample sufficiently competent.

*Hypothesis 1:* The number of violations of the principle of transparency decreased over the years. Based on the selected methodology and the presented results in Table 6, Table 7 and Table 8, this hypothesis was rejected.

*Hypothesis 2:* Most violations of the principle of transparency relate to the fact that the contracting authorities fail to publish the contract notice on the public procurement portal. Based on our own analysis, it is evident that the most common violation is the disabling of access to the selected bidder's offer. Based on the selected methodology and the presented results, this hypothesis was rejected.

*Hypothesis 3:* Municipal bodies violate the principle of transparency more often than state bodies. The hypothesis was tested with the authors' own analysis.

**Table 13: Proving of hypothesis 3**

Cases of violation of the principle of transparency in 2008–2015 (ZJN-2)	NRC analysis	
	Municipal level	16.999%
State level	10.714%	41.68%

Source: authors based on own analysis

Table 13 presents the results of the authors' own analysis. The authors' own analysis shows that the proportions of detected violations throughout the period under consideration are 26.15%, which is converted into 100% of the total. The violations by local municipal bodies amount to 16,996% on average, which translates into 58.32% of the total. The violations by state bodies amount on average to 10,714%, which translates into 41.68% of the total. Using  $\chi^2$  test for comparison of proportions we computed  $\chi^2 = 4.672$ ,  $df = 1$  and  $p = 0.0307$ . Therefore, the proportions on both levels are significantly different. Based on the selected methodology and the presented results, this hypothesis was confirmed.

*Hypothesis 4:* Number of violations at municipal and national levels are related. Based on the results in Table 12, the hypothesis was confirmed.

### Interpretation of the results

The number of violations is increasing over the years. There are several reasons for this. In the years of the economic crisis, public procurement was a very important factor in obtaining fresh income for companies. At that time, banks did not issue loans or, if they were, they were loans with a high interest rate, which was by no means favourable for companies. The second reason is that both contracting authorities and tenderers have found that violations of public procurement procedures are not severely sanctioned by NRC and the Court of Audit. The tool used by Court of Audit is to issue a negative opinion, which in practice has not any weight in penalizing offenders. In practice, there are cases where the municipalities have clearly violated legislation, but until now no one was held accountable for this. The most commonly incorrectly used institute in practice is to disable the insight into the offer of the selected bidder. An insight into the offer of other providers represents a competitive advantage in similar public procurement procedures, so providers generally used these legal options and filed requests for insight. The contracting authorities are most likely due to the possibility of lawsuits for the disclosure of business secrets – as a rule, providers indicate the whole or most of the offer as a business secret – they did not allow access to the part of the tender documentation that is determined in accordance with the legislation as a public information. The results of the analysis showed that the authorities of self-governing local communities more often violate the principle of transparency than the state authorities. This claim can be supported by information that local communities have an average management ability of 52.6%, while the remaining 47.4% have below the average. More specifically, in the survey conducted in 2014, 57% of the directors of the municipal administrations stated that it had a sufficient number

of employees for performing statutory tasks, while 43% stated that they had insufficient number of employees.<sup>29</sup> As a result, from the literature, we can understand that almost half of the municipalities have a staff deficit and therefore it is difficult for them to perform the tasks prescribed by law in a quality and professional way. There is a statistical feature among violations at municipal and national level. We have found that there is a high/strong correlation between the number of violations at municipal and state level. This can be explained by the fact that information between the various levels of authority circulates and therefore increases at both levels. The second reason to be highlighted is related to the hypothesis 2. The contracting authorities and providers have found that sanctions are mild and, therefore, in certain cases and periods, especially during pre-election time, they are paid off to violate the law, with the aim of facilitating and speeding up the public orders.

## VI. Conclusion

Public spending is a very sensitive area in the eyes of the public, especially in times of a financial and economic crisis. Public procurement is an instrument of public spending, and transparency and efficiency of implementation are always under scrutiny. The taxpayers care about how their money is being spent and demand that the state does so transparently and efficiently.

The main findings of the study can be summarised in a few statements. The number of violations of the fundamental principle of transparency increased over the years. The increase is due to increased amount of money for public procurement in EU countries in period 2012–2015, making public procurement financially more attractive to the tenderers. Interest in public procurement increased as the private sector was unable to obtain loans during the economic crisis, and public procurement was a good opportunity to bring fresh money into a company. Another reason is the lack of or failure by the NRC and the Court of Audit to apply sanctions on the violators and to protect the rights of the tenderers. Both learned from the practices of the NRC that the sanctions imposed were not discouraging from deliberate misapplications of the principle of transparency. The institute, which in practice is mostly used improperly, is to disable access to the selected bidder's offer (44%). The reason for frequent misapplication of these element is that it allows the contracting authority to choose – instead of the best tenderer – the tenderer with whom it has previously made an agreement or the one from which the contracting authority will have the greatest benefit.

The results further show that local municipal bodies misapply the elements of the principle of transparency more often than state bodies. This is in line with expectations, considering the level of administrative capacity of the municipalities. In Slovenia, 52.6% of the local communities have an average administrative capacity, while the remaining 47.4% have an administrative capacity index below the average. One of the main reasons for such state of affairs is that municipal administrations have fewer employees to perform legally provided tasks than state bodies.

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<sup>29</sup> Rožen (2014).

In Slovenia there are already good IT solutions, for example Catalogue of food for public procurement which was established by the Chamber of Commerce and Industry – Chamber of Agricultural and Food Enterprises. The main advantage is that it follows changes in Slovenian public procurement legislation. It is up to date with situation on current market, which makes procurement easier, faster and more economic. In our opinion, this could be a solution for other public procurement areas.

Further improvement in public procurement transparency is expected from the electronic submission of tenders through the e-JN portal, introduced by the ZJN-3 and applied since 1 April 2018. The tenderers who submit their tenders through this portal receive a simple e-record of the opening of the tenders that is automatically generated by the portal. Tenderers also have access to the most important parts of the public procurement, which will thus definitely reduce the number of the requests for review relating to transparency of public procurement.

In principle, an improvement of the situation is possible through consistent implementation of laws and implementing regulations, which can be achieved through supervision and training of management and other employees in public administration.<sup>30</sup> Improvements can also be achieved by establishing a joint body of municipal administrations in the field of public procurement and by simplifying procurement procedures for tenderers from abroad. The possibilities for foreign tenderers are formally regulated in public procurement legislation, but there are quite a few obstacles, therefore the contracting authorities prefer to opt for tenderers from Slovenia. A thorough analysis of the public procurement market is needed to identify areas that could be strengthened by the presence of foreign tenderers. Finally, new or a more consistent use of the already existing leverage by the NRC and the Court of Audit would also lead to an improvement in such regard. This primarily means to establish specific – political and legal – consequences in the event of violations of the principles and rules of public procurement.

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<sup>30</sup> Virant (2003).

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