



**COMMISSION FOR PROTECTION OF RIGHTS IN PUBLIC PROCUREMENT
PROCEDURES**

**WORK REPORT
COMMISSION FOR PROTECTION OF RIGHTS IN PUBLIC PROCUREMENT
PROCEDURES
for the period from January 01 to June 30, 2021**

July 2021

THE CONTENT

INTRODUCTION.....	3
1. STATUS AND ORGANIZATION OF THE COMMISSION FOR PROTECTION OF RIGHTS.....	3
1.1 Financing and financial operations of the Commission for the Protection of Rights.....	3
1.2 Office space.....	4
1.3 Anti-corruption activities of the Commission for the Protection of Rights.....	4
1.4 Publicity of work and IT equipment	5
2. STATISTICAL DATA ON THE WORK OF THE COMMISSION FOR PROTECTION OF RIGHTS	6
2.1 Cases in progress.....	6
2.2 The total number of resolved and unresolved cases that the Commission for the Protection of Rights had in its work in the second half of 2021.....	6
2.3 Appeal cases.....	7
2.4 Cases based on the execution of judgments of the Administrative Court of Montenegro..	7
2.5 Number of resolved appeals in dockets by phases of procedure.....	8
2.6 Number of resolved appeals filed in accordance with the type of procedure	8
2.7 Appeals resolved by types of public procurement procedure	8
2.8 Structure of appellant.....	9
2.9. Manner of resolving appeal cases.....	9
2.10. Decision-making time on appeals.....	10
3. CLAIMS FOR INITIATING AN ADMINISTRATIVE DISPUTE AGAINST COMMISSION DECISIONS	10
4. CASES BY JUDGMENTS OF THE ADMINISTRATIVE COURT OF MONTENEGRO.....	10
5.DECISIONS OF THE SUPREME COURT OF MONTENEGRO IN PUBLIC PROCUREMENT PROCEDURES.....	11
6. IMPLEMENTATION OF DECISIONS OF THE COMMISSION FOR PROTECTION OF RIGHTS.....	11
SUMMARY.....	12

INTRODUCTION

The semi-annual report on the work of the Commission for Protection of Rights in Public Procurement Procedures (hereinafter: the Commission for Protection of Rights) is a general overview of all its activities starting from status, financing and financial operations, human resources, up to work within the statutory competence, and public work.

Protection of rights in the public procurement system is realized in all phases of the public procurement procedure and in the procedures of awarding public-private partnership contracts, through the so-called pre-contractual and post-contractual protection of rights.

Pre-contractual protection of rights is initiated by an appeal in the procedure shall be exercised before Commission for Protection of Rights, while post-contractual protection of rights is exercised before the Administrative and Supreme Court of Montenegro.

1. STATUS AND ORGANIZATION OF THE COMMISSION FOR PROTECTION OF RIGHTS

The provision of Article 198 of the Law on Public Procurement (“Official Gazette of Montenegro”, No. 74/19) stipulates that the Commission for Protection of Rights is an authority responsible for protection of rights in public procurement procedures as well as the procedures for awarding contracts on public-private partnership.

Until the entry into force of this Law, this body was called the State Commission for Control of Public Procurement Procedures, which name was inadequate given that even under the old Law, the competence of the Commission did not include control of public procurement procedures, but only the protection of participants' rights of procurement.

The consequence of such an inadequate name, which caused confusion in the public, are omissions made during the previous amendments to the Law on Public Procurement, to determine an adequate name, which was done with the final entry into force of the new Law on Public Procurement on 09.07.2020.

The Commission dealt with the control of public procurement procedures, only in the period from 2012. until 2014, and only in cases when the estimated value of the subject of procurement was over 500,000.00 euros.

In accordance in established competencies and powers, the Commission for Protection of Rights is a key subject of institutional protection of rights and legal interests of participants in public procurement procedures and participants in public-private partnership award procedures, which is why, for the sake of objectivity of its decisions, Article 198 paragraph 3 of the Law on Public procurement stipulates that the Commission for the Protection of Rights is independent and autonomous in performing functions determined by this Law.

The competence and powers of the Commission for the Protection of Rights are determined by Article 205 of the Law on Public Procurement, which stipulates that the Commission for the Protection of Rights:

1) decide on appeals field in public procurement procedures and the procedures for the award of public-private partnership ;

2) inform the inspection and other competent authorities of the perceived incriminated actions in the public procurement procedures;

3) cooperate and exchange information in the field of public procurement with the competent authorities of other countries, international institutions and organizations;

4) adopt the Rules of Procedures;

5) perform other tasks in accordance with this Law and a separate law.

The Commission for the Protection of Rights has a president and 6 members.

The President and members of the Commission are appointed by the Government, at the proposal of the Ministry, on the basis of a public competition, for a period of 5 years.

The Commission for the Protection of Rights has Rules of Procedure which regulate the manner and work of the Commission.

The Commission for the Protection of Rights has a Legal Department, that carries out professional and administrative-technical tasks necessary for its work. According to the current Rulebook on Internal Organization and Systematization of the Legal Department of the Commission for the Protection of Rights in Public Procurement Procedures No. 09-143 / 1-2020 of July 27, 2020, the total of 19 job positions were systematized. Out of a total of 19 systematized job positions, 17 job positions were filled, while two systematized job positions were as follows: Secretary and independent clerk-technical secretary, are unfilled positions.

Namely, in the first half of 2021. the conditions for announcing the public competition for the Secretary were not fulfilled, considering that the Budget of Montenegro has not been adopted, and thus the Personnel Plan for 2021 has not been adopted, as well as the valid Rulebook on Internal Organization and Systematization of the Professional Service of the Commission for the Protection of Rights in Public Procurement Procedures No. 09-143 / 1-2020 of July 27 2020, harmonized with the aforementioned Law on Civil Servants and State Employees, which is why an initiative has been proposed for the adoption of a new Rulebook on Internal Organization and Systematization of the Professional Service Commission for Protection of Rights in Public Procurement Procedures No. 09-44 / 10-2021 of June 3, 2021, which was issued on June 15, 2021, sent to the Ministry of Finance and Social Welfare for submission to the Government of Montenegro for adoption, and which has not been adopted by the date of submission of this Report, so the tasks of the Secretary, have been performed by the independent advisor I.

1.1 Financing and financial operations of the Commission for the Protection of Rights.

Financial resource for the work of the Commission for the Protection of Rights are provided from the Budget of Montenegro.

By the Law on Budget of Montenegro for 2021. the amount of EUR 401,892.03 have been allocated to the Commission for the Protection of Rights.

Income, proof of payment of the fee for initiating the appeal proceedings, in the amount of 1% of the estimated value of the public procurement, and that the amount of the fee cannot exceed EUR 20,000.00, therefore, in the case when it is decided in favor of the appellant, the fee for initiating the appeal proceedings are returned to the appellant, while in the case when the appellant fails in the appellate procedure, the fee represent the revenue of the Budget of Montenegro.

The payment of the fee for initiating the appeal proceedings is paid to the account number 530-20240-15 and the foreign currency lot 00-511-0005007.6, with NLB Montenegro bank AD Podgorica.

On the mentioned accounts on January 01, 2021 were 231,531.70 euros. In the period from January 01, up to June 30, 2021, EUR 199,333.14 was paid for payment of the fee for initiating the appeal proceedings, while the appeal proceeding in the appellant s favour return the amount of 154.577,90 euros, payment costs were paid in the amount of 365.54 euros, so on the accounts of June 30,2021.the amount was EUR 275,921.40.

1.2 Business space

The Commission for the Protection of Rights has an adequately resolved business premises located in the street: Novaka Miloševa no. 28. All offices are equipped with furniture and technical equipment.

1.3 Anti-corruption activities of the Commission for the Protection of Rights

The anti-corruption activities of the Commission for the Protection of Rights are primarily realized through the appellate control of public procurement procedures and the procedure of awarding public-private partnership contracts with the consequence of annulling those, for which are found to have been conducted against the Law, how it prevents the conclusion of harmful contracts, and the same the realization of potential corrupt behavior. At the same time, through the tasks within the competence of the Commission for the Protection of Rights, a preventive function is also achieved, which prevents the occurrence of illegal actions and harmful consequences.

An important anti-corruption effect lies in publicly available legal practice.According to that, all decisions are published on the website of the Commission for the Protection of Rights in full form, ie. with the names of the parties, making the legal protection procedure transparent.

1.4 Publicity of work and IT equipment

The publicity of the work of the Commission for Protection of Rights is realized primarily through its website www.kontrola-nabavki.me which contains all relevant data and information related to the system of protection of rights in Montenegro in public procurement procedures, as well as the work of the Commission for Protection of Rights, and which contains detailed information, ie instructions on the appeal procedure. All its decisions made since 2012 are published on the website of the Commission for the Protection of Rights, at the same year when the Commission was constituted. Also, by putting into operation the Electronic Public

Procurement System (ESJN), which started operating on January 1, 2021. the decisions of the Commission are also published on this electronic system, which ensures full transparency of its work.

2. STATISTICAL DATA ON THE WORK OF THE COMMISSION FOR PROTECTION OF RIGHTS

2.1. Cases in progress

In the first half of 2021, in the period from January 01, to June 30, 2021 the Commission for the Protection of Rights had a total of 124 cases, out of which all the cases received in the reporting period (116 appeals, 8 cases upon execution of the Administrative Court rulings of Montenegro).

Of the stated number of cases that the Commission for Protection of Rights had in its work, all were related to public procurement procedures, while the Commission for Protection of Rights in the reporting period did not have any cases on appeal to the procedure of awarding a public-private partnership contract.

Cases transferred from 2020	0
Cases received in the first half of 2021	124
Total:	124

2.2 Total number of resolved and unresolved cases the Commission for the Protection of Rights had in its work in the first half of 2021

In the first half of 2021 the Commission for the Protection of Rights had in total 124 cases, of which 104 cases were resolved (86.30%), while 17 cases remained unresolved (13.70%) due to the fact that they were received at the end of the reporting period (at the end of second half of June 2021)

Spreadsheet:

Case type	in total	Resolved	%	Unresolved	%
Appeal cases	116	101	87.07%	15	12.93%
Cases upon execution of the Administrative Court rulings					

	8	6	75%	2	25 %
Total:	124	107	86.30%	17	13.70%

2.3 Appeal cases

Out of a total of 116 appeal cases, the Commission for the Protection of Rights resolved 101 appeal cases.

Spreadsheet on day 30.06.2021:

Total number of appeal cases in the first half of 2021.	Resolved cases in the first half of 2021.	Unresolved cases in the first half of 2021.
116	101	15
Percentage	87.07%	12.93%

2.4 Cases upon execution of the Administrative Court rulings

In the reporting period, the Commission had 8 cases upon execution of the Administrative Court rulings, all cases received in the first half of 2021. Out of the total number of these cases, 6 cases have been resolved.

Total number of cases upon execution of the Administrative Court rulings of Montenegro in the first half of 2021.	Resolved cases upon execution of the Administrative Court rulings of Montenegro in the first half 2021.	Unresolved cases upon execution of the Administrative Court rulings of Montenegro in the first half of 2021.
8	6	2
Percentage	75%	25%

In addition to the above 8 judgments of the Administrative Court, the Commission for the Protection of Rights received another judgment which accepted the lawsuit but in which the Administrative Court of Montenegro decided on the merits.

2.5 Number of resolved appeals in dockets by phases of procedure

Out of the total number of dockets cases resolved (101), in the reporting period the Commission for Protection of Rights resolved: 77 appeals filed against the Decision on selection of the most favorable bid, 12 appeals against the Decision on annulment of the public procurement procedure, 11 appeals filed against the Tender Documentation, and 1 appeal against the Decision on correction of mistakes.

Appeals filed against:	Number of appeals
Tender documentation	11
Decision on selection of the most favourable bid	77
Decision on annulment of the public procurement procedure	12
Decision on correction mistakes	1
Total:	101

2.6 Resolved appeals filed in accordance with type of procedures

Out of the total number of resolved cases, in the reporting period the Commission for Protection of Rights resolved: 101 complaints filed in an open public procurement procedure.

Open public procurement	101
Total:	101

2.7 Appeals resolved by types of public procurement procedures

Out of the total number of resolved cases, in the reporting period the Commission for Protection of Rights resolved the following: 45 complaints were resolved in relation to public procurement procedures in which the subject of procurement were goods, 16 complaints were resolved in relation to public procurement procedures in which the subject of procurement were works and 40 complaints were resolved in relation to public procurement procedures in which the subject of the procurement were services.

Goods	45
Works	16
Services	40

Total:	101
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2.8 Structure of appellant

Appellant	Number of appeals
Domestic companies (LTD, Joint Stock....)	97
Foreign companies	3
Consortium of domestic companies	1
Total:	101

2.9 Manner of resolving appeal cases

Spreadsheet of manner of resolving appeal cases

Type of decision	Number of appeals
Reject the appeal as unfounded	21
Accepted appeal	38
Partially accepted	29
The procedure was suspended due to the appellant's withdrawal from the appeal	3
Due to the appeal ex officio, the public procurement procedure was annulled in its entirety	9
Due to the appeal ex officio, the public procurement procedure was annulled partially	1
Total:	101

2.10 Decision-making time on appeals

In the first half of 2021, the Commission for the Protection of Rights in Public Procurement Procedures had a total of 116 appellate cases, and resolved 101 appellate cases. Out of total number, 2 complaints were resolved under the old Law on Public Procurement ("Official Gazette of Montenegro", No. 42/11, 57/14, 28/15 and 42/17), while 99 complaints were resolved under the new Law on public procurement ("Official Gazette of Montenegro", No. 74/19).

The average number of days for resolving cases on appeal was 20 days from the date of submission of complete documentation by the contracting authority.

3. CLAIMS FOR INITIATING AN ADMINISTRATIVE DISPUTE AGAINST COMMISSION DECISIONS

In the reporting period, the Administrative Court of Montenegro submitted to the Commission for the Protection of Rights in Public Procurement Procedures 15 claims, out of which 13 claims were filed against the decisions of the Commission from the 2021, and 2 claims against the decisions of the Commission for the Protection of Rights from 2020.

Therefore, in relation to the total number of decisions made by the Commission in 2021. (107), 13 claims were filed to the Administrative Court of Montenegro against the decisions of the Commission for the Protection of Rights, which makes the percentage of 12.15%, in relation to the total number of decisions.

It follows from the above that, in relation to the total number of decisions made by the Commission in the 2021, in 87,85% of cases the contracting authorities and the bidders considered that the decisions of the Commission of the Protection of Rights were legitimate.

4. CASES BY JUDGMENTS OF THE ADMINISTRATIVE COURT OF MONTENEGRO

In the reporting period, the Commission for Protection of Rights received 27 rulings and 1 decisions of the Administrative Court of Montenegro, which were issued in the proceedings on lawsuits filed against the decisions of the Commission, out of which:

- 8 judgments by which lawsuits were adopted and cases returned to the Commission for the Protection of the Right for reconsideration
- 1 judgment by which the lawsuit was adopted and in which the Administrative Court decided on the merits
- 18 judgments rejecting the claims,
- 1 decision by which the procedure is suspended due to the abandonment of the claim filed by a plaintiff.

Out of the 8 judgments by which claims were adopted and which returned a case to the Commission for the Protection of the Right for reconsideration, 1 judgment referred to the decisions of the Commission from 2020, 6 judgments referred to the decisions of the Commission from 2019, 1 judgment referred to the decisions of the Commission from 2018.

1 judgment by which the lawsuit was adopted and in which the Administrative Court decided on the merits, referred to the decisions of the Commission from 2019.

Out of the 18 judgments rejecting the claims, 2 judgements refer to the decisions of the Commission as of 2020, 14 judgments refer to the decisions of the Commission from 2019, and 2 judgments refer to the decisions of the Commission from 2018.

1 decision by which the procedure is suspended due to the abandonment of the claim filed by a plaintiff, refers to the decision of the Commission from 2019.

Out of 13 lawsuits received in the second half of 2021, against the decisions of the Commission, refer to 2021, Administrative Court of Montenegro to the end of mentioned period has not resolved a single lawsuit.

5. DECISIONS OF THE SUPREME COURT OF MONTENEGRO IN PUBLIC PROCUREMENT PROCEDURES

The provision of Article 40 of the Law on Administrative Dispute stipulates that against the legally binding decisions of the Administrative Court of Montenegro, and thus against the judgments of that Court rendered in the procedure of deciding on lawsuits against the decisions of the Commission for the Protection of Rights, the following extraordinary legal remedies may be submitted a request to the Supreme Court for exceptional reconsideration of a court decision and a request for repeat of the procedure.

In the reporting period the Commission of the Protection of Rights received 3 judgements from the Supreme Court of Montenegro issued on requests for review of the court decision of the Administrative Court of Montenegro. Out of these 3 judgments, all judgements the Supreme Court rejected the requests as unfounded.

6. IMPLEMENTATION OF DECISIONS OF THE COMMISSION FOR PROTECTION OF RIGHTS

The provision of Article 192, paragraph 3 of the new Law on Public Procurement stipulates that the contracting authority shall act upon the decision of the Commission for Protection of Rights, within 15 days from the date of publication of the decision, or supply of the decision and inform Commission for Protection of Rights thereof within the deadline, and if the contracting authority fails to act in accordance with paragraph 4 of the same article of this Law, the Commission for Protection of Rights shall notify the Ministry and the public procurement inspector thereof.

As in the reporting period there was no non-compliance with the decisions of the Commission for Protection of Rights, there was no reason to apply Article 192 paragraph 4 of the Law on Public Procurement.

RESUME

The Commission for the Protection of Rights in Public Procurement Procedures was constituted in 2012, whose competencies and powers are determined by Article 139 of the PPL. In the period from its constitution to mid-2017, when the Law on Amendments to the Law on Public Procurement came into force, the Commission for Protection of Rights had a significantly increased inflow of cases from year to year, so that compared to 2012, when she had 682 cases in progress, that number at the end of 2017. increased to 1344 cases. This increase in the inflow of cases was stopped, first of all, by the extraordinary efforts of both the members of the Commission and its Legal Department and followed by adoption of the Law on Amendments to the Law on Public Procurement ("Official Gazette of Montenegro", No. 42/17). which was entered into force in mid-2017, which improved certain poor regulations, as well as increased the number of members of the Commission and its Legal Department, so in the following years the influx of cases decreased from year to year, so that the Commission in 2018. had 732 cases in progress, 370 cases had in 2019, and in 2020 has had 269 cases, and in mentined year the presentage of resolved cases was 100%.

In addition to the above, no less important factor for the achieved success, in terms of timeliness is the providing of adequate business premises in 2018. It is important to note that the Commission for the Protection of Rights has reduced the number of average days compared to the previous period necessary for deciding on the submitted appeals with 30 days in 2018. and 21 days in 2019, on 18 days in the reporting period.

According to the current Rulebook on Internal Organization and Systematization of the Legal Department of the Commission for the Protection of Rights in Public Procurement Procedures No. 09-143 / 1-2020 of July 27, 2020, the total of 19 job positions were systematized. Out of a total of 19 systematized job positions, 17 job positions were filled, while two systematized job positions were as follows: Secretary and independent clerk-technical secretary, are unfilled positions.

The Commission for the Protection of Rights has an internal information system on which all decisions of the Commission are published for the sake of transparency of the procedure. Also, by putting into operation the Electronic Public Procurement System (ESJN), the Commission's decisions are published on this electronic system, which ensures full transparency of its work.

In the first half of 2021, in the period from January 1, to June 30, 2021 the Commission for the Protection of Rights had in total of 124 cases, all cases resolved in the reporting period (116 appeals, and 8 cases upon execution of the Administrative Court rulings of Montenegro), which

resolved 104 cases (86.30%) while 17 cases remained unresolved (13.70%) due to the fact that they were received at the end of the reporting period (at the end of second half of June 2021).

In the reporting period, the Administrative Court of Montenegro submitted to the Commission for the Protection of Rights in Public Procurement Procedures 15 claims, out of which 13 claims were filed against the decisions of the Commission from 2021, 2 claims against the decisions of the Commission for the Protection of Rights from 2020. Out of which the Administrative Court of Montenegro to the end of mentioned period has not resolved a single lawsuit.

In the reporting period, the Commission for Protection of Rights received 27 rulings and 1 decisions of the Administrative Court of Montenegro, which were issued in the proceedings on lawsuits filed against the decisions of the Commission, while none of these judgments relate to Commission decisions which is resolved in 2021, out of which 3 claims refers to the decision of Commission which is resolved in 2020, out of which 24 judgments and 1 decision related to the lawsuits on the decisions of the Commission which is resolved in 2019 and 2018.

In the mentioned period the Commission of the Protection of Rights received 3 judgements from the Supreme Court of Montenegro issued on requests for review of the court decision of the Administrative Court of Montenegro. Out of these 3 judgments, all judgements the Supreme Court rejected the requests as unfounded.

We especially emphasize that the Commission for the Protection of Rights, despite the fact that she worked in extraordinary circumstances, due to the corona virus pandemic (Covid 19) performed all tasks on time manner.