



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

**WORK REPORT  
COMMISSION FOR PROTECTION OF RIGHTS IN PUBLIC PROCUREMENT  
PROCEDURES  
FOR THE PERIOD July,01. December, 31 2021.**

**January 2022**

## THE CONTENT

<b>INTRODUCTION.....</b>	<b>3</b>
<b>1. STATUS AND ORGANIZATION OF THE COMMISSION FOR PROTECTION OF RIGHTS.....</b>	<b>3</b>
1.1 . Financing and financial operations of the Commission for the Protection of Rights.....	4
1.2 Office space.....	5
1.3 Anti-corruption activities of the Commission for the Protection of Rights.....	5
1.4 Publicity of work and IT equipment .....	5
<b>2. STATISTICAL DATA ON THE WORK OF THE COMMISSION FOR PROTECTION OF RIGHTS .....</b>	<b>6</b>
2.1 Subjects 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 Requests for reinstating the procedure.....	7
2.6 Number of resolved appeals in dockets by phases of procedure.....	8
2.7 Number of resolved appeals filed in accordance with the type of procedure .....	8
2.8 Appeals resolved by types of public procurement procedure .....	8
2.9 Structure of appellant.....	9
2.10. Manner of resolving appeal cases.....	9
2.11. Decision-making time on appeals.....	10
<b>3. CLAIMS FOR INITIATING AN ADMINISTRATIVE DISPUTE AGAINST COMMISSION DECISIONS .....</b>	<b>10</b>
<b>4.. CASES BY JUDGMENTS OF THE ADMINISTRATIVE COURT OF MONTENEGRO.....</b>	<b>10</b>
<b>5.. DECISIONS OF THE SUPREME COURT OF MONTENEGRO IN PUBLIC PROCUREMENT PROCEDURES.....</b>	<b>11</b>
<b>6.. IMPLEMENTATION OF DECISIONS OF THE COMMISSION FOR PROTECTION OF RIGHTS.....</b>	<b>11</b>
<b>SUMMARY.....</b>	<b>12</b>

## **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.

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.

In the second half of 2021. the Commission for the Protection of Rights worked in an incomplete composition, in the composition of 5 members, of which one member is the Deputy President of the Commission, due to the fact that the Government of Montenegro at its session on June 22, 2021. passed a Decision by which the mandate of the President of the Commission for the Protection of Rights expires due to the expiration of the term for which he was appointed, while the Government of Montenegro at its session on September 23, 2021. adopted decision terminating the mandate of one member of the Commission for the Protection of Rights at the personal request, due to the acquisition of conditions for retirement. In the second half of 2021. public competitions have been announced for the president of the Commission for Protection of Rights and three members of the Commission for Protection of Rights, and which procedures are in progress.

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.

On June 15,2021. the Commission sent to the Ministry of Finance and Social Welfare the Rulebook on Internal Organization and Systematization of the Professional Service of the Commission for the Protection of Rights in Public Procurement Procedures No. 09-44 / 10-2021 of June 3, 2021. for submission to the Government of Montenegro, for the purpose of its adoption. However, as the Commission for Protection of Rights did not receive a statement on whether the consent was given until the day of submitting this report, the Commission could not adopt the Personnel Plan for 2021, and consequently it could not announce the public competition, because the conditions for announcing the public competition were not fulfilled, so the tasks of the Secretary, have been performed by the independent advisor I. Namely, the mentioned Rulebook did not change the number of executors in relation to the current Rulebook on internal organization and systematization of the Legal Department of the Commission for Protection of Rights in Public Procurement Procedures No. 09-143 / 1-2020 27.07.2020, there has only been a harmonization with the new Law on Civil Servants and State Employees ("Official Gazette of Montenegro", No. 2 / 18,34 / 19 and 08/21) in terms of conditions for performans of tasks.

### **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.

The provision of Article 188 paragraph 3 and 4 of the Law on Public Procurement (“Official Gazette of Montenegro”, No. 74/19) stipulates that the appellant is obliged to attach with the appeal proof of payment of the fee for initiating the appeal proceedings, in the amount of 1% of the estimated value of the public procurement, or to submit this proof no later than the deadline for appeal, and that the amount of the fee cannot not exceed EUR 20,000.00, while paragraph 5 of this Article stipulates that if a decision is made in the appeal proceeding in the appellant s favour, the Commission for Protection of Rights shall return the fee to the appellant within 15 days from the date the decision on the appeal becomes final and enforceable. 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 June, 30, 2021, were 275,921.40 euros. In the period from June 30 to December 31, 2021, EUR 140,543.52 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 154.259,36 euros, which amount includes fees paid in the second half of 2021, and as well first half of 2021, as well as paid fees from previous periods, in the fact that the fee for initiating the appeal proceedings are returned to the appellant and decision on the appeal becomes final and enforceable. In addition to the above, payment costs were paid in the amount of 217.49 euros, so on the accounts of December 31, 2021. the amount was EUR 263,689.20, which amount was increased by EUR 1,701.13 due to the exchange rate difference of USD ^ EUR on December 31, 2021. in relation to December 31, 2020, and refers to the amount of 25,000.86 USD which is on the foreign exchange lot.

## **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](http://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 sam 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 second half of 2021, in the period from July 7, to December 31, 2021 the Commission for the Protection of Rights had a total of 110 cases, out of which 17 cases transferred in 2021 (15 appeals, and 2 cases upon execution of the Administrative Court rulings of Montenegro) and 93 cases received in second half of 2021 (78 appeals, 13 cases upon execution of the Administrative Court rulings of Montenegro and 2 motions for reinstating the procedure).

Of the stated number of cases (110) that the Commission for Protection of Rights had in its work, 109 were related to public procurement procedures, 1 case to the Notification on the outcome of simple 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 the first half of 2021	17
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Cases received in second half of 2021	93
Total:	110

## 2.2 Total number of resolved and unresolved cases the commission for the protection of right had in its work in the second half of 2021

In second half of 2021 the Commission for the Protection of Rights had in total 110 cases, of which 96 cases were resolved (87.27%), while 14 cases remained unresolved (12.73%) due to the fact that they were received at the end of the reporting period ( at the end of December 2021)

Spreadsheet:

Case type	in total	Resolved	%	Unresolved	%
Appeal cases	93	79	<b>84.95%</b>	14	<b>15.05%</b>
Cases upon execution of the Administrative Court rulings	15	15	<b>100%</b>	0	<b>0%</b>
Motions for reinstating the procedure	2	2	<b>100%</b>	0	<b>0%</b>
<b>Total:</b>	<b>110</b>	<b>96</b>	<b>87.27%</b>	<b>14</b>	<b>12.73%</b>

## 2.3 Appeal cases

Out of a total of 93 appeal cases, in the first half of 2021, the Commission for the Protection of Rights resolved 79 appeal cases.

Spreadsheet on day 31.12.2021:

Total number of appeal cases in second half of 2021.	Resolved cases in the second half of 2021.	Unresolved cases in the second half of 2021.
93	79	14

<b>Percentage</b>	<b>84.95%</b>	<b>15.05%</b>
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## 2.4 Cases upon execution of the Administrative Court rulings

In the reporting period, the Commission had 15 cases upon execution of the Administrative Court rulings, out of which 13 cases received in the second half of 2021. Out of the total number of these cases, all 15 cases have been resolved.

<b>Total number of cases upon execution of the Administrative Court rulings of Montenegro in the second half of 2021.</b>	<b>Resolved cases upon execution of the Administrative Court rulings of Montenegro in the second half 2021.</b>	<b>Unresolved cases upon execution of the Administrative Court rulings of Montenegro in the second half of 2021.</b>
15	15	0
<b>Percentage</b>	<b>100%</b>	<b>0%</b>

## 2.5 Motions for reinstating the procedure

In the second half of 2021, there were 2 motions for reinstating of the procedure submitted to the Commission, which the Commission resolved by the end of the reporting period.

<b>Total number of motions for reinstating the procedure in the second half of 2021.</b>	<b>Resolved motions for reinstating the procedure in the second half of 2021.</b>	<b>Unresolved motions for reinstating the procedure in the second half of 2021.</b>
2	2	0
<b>Percentage</b>	<b>100%</b>	<b>0%</b>

## 2.6 Number of resolved appeals in dockets by phases of procedure



Out of the total number of dockets cases resolved (79), in the reporting period the Commission for Protection of Rights resolved: 10 appeals filed against the Tender Documentation, 60 appeals filed against the Decision on selection of the most favorable bid, 7 appeals against the Decision on annulment of the public procurement procedure, 1 appeal against the Decision on exclusion from the public procurement procedure, 1 appeal/notification on the outcome of simple public procurement.

<b>Appeals filed against:</b>	<b>Number of appeals</b>
Tender documentation	10
Decision on selection of the most favorable bid	60
Decision on annulment of the public procurement procedure	7
Decision on exclusion from the public procurement procedure	1
Notification on the outcome of simple public procurement	1
<b>Total:</b>	<b>79</b>

### **2.7 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: 75 complaints filed in an open public procurement procedure, 2 appeals filed upon restricted procedures, 1 appeal upon negotiated procedures without prior publication of contract notice and 1 upon simple procurement.

Open public procurement procedure	75
Restricted procedures	2
Negotiated procedures without prior publication of contract notice	1
Simple procurement	1
<b>Total:</b>	<b>79</b>

## 2.8 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: 34 complaints were resolved in relation to public procurement procedures in which the subject of procurement were goods, 18 complaints were resolved in relation to public procurement procedures in which the subject of procurement were works and 27 complaints were resolved in relation to public procurement procedures in which the subject of the procurement were services.

Goods	34
Works	18
Services	27
<b>Total:</b>	<b>79</b>

## 2.9 Structure of appellant

<b>Appellant</b>	<b>Number of appeals</b>
Domestic companies (LTD, Joint Stock....)	77
Foreign companies	1
Consortium of domestic companies	1
<b>Total:</b>	<b>79</b>

## 2.10 Manner of resolving appeal cases

*Spreadsheet of manner of resolving appeal cases*

<b>Type of decision</b>	<b>Number of appeals</b>
Reject the appeal as unfounded	16
Reject the appeal as incomplete	1

Reject the appeal as untimely	1
Reject the appeal as untimely and incomplete	1
Dismissed as unfounded due to incompetence	1
Appeal was rejected due to incompetence	1
Accepted appeal	22
Partially accepted	27
The procedure was suspended due to the appellant's withdrawal from the appeal	6
Due to the appeal ex officio, the public procurement procedure was annulled in its entirety	4
<b>Total:</b>	<b>79</b>

### 2.11 Decision-making time on appeals

In the second half of 2021, the Commission for the Protection of Rights in Public Procurement Procedures had a total of 93 appellate cases, and resolved 79 appellate cases. Out of total number, 1 complaint was resolved under the old Law on Public Procurement ("Official Gazette of Montenegro", No. 42/11, 57/14, 28/15 and 42/17), while 78 complaints were resolved under the new Law on public procurement ("Official Gazette of Montenegro", No. 74/19), while 78 complaints were resolved under the new Public Procurement Law ("Official Gazette of Montenegro", No. 74/19).

The average number of days for resolving cases on appeal was 27 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 17 claims, out of

which 5 claims were filed against the decisions of the Commission from the first half of 2021, 11 claims against the decisions of the Commission for the Protection of Rights from the second half of 2021, and 1 claim referred to the silence of administration.

Therefore, in relation to the total number of decisions made by the Commission in second half of 2021. (96), 11 claims were filed to the Administrative Court of Montenegro against the decisions of the Commission for the Protection of Rights from the second half of 2021, which makes the percentage of 11.46%. It follows from the above that, in relation to the total number of decisions made by the Commission in the second half of 2021, in 88,54% 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 21 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:

- 13 judgments by which lawsuits were adopted and cases returned to the Commission for the Protection of the Right for reconsideration
- 8 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 13 judgments by which claims were adopted and which returned a case to the Commission for the Protection of the Right for reconsideration, all 13 judgments referred to the decisions of the Commission from 2019.

Out of the 8 judgments rejecting the claims, 6 judgements refer to the decisions of the Commission as of 2019, 2 judgments refer to the decisions of the Commission as of 2020.

1 decision by which the procedure is suspended due to the abandonment of the claim filed by a plaintiff, refers to the silence of the administration.

Out of 16 lawsuits received in the second half of 2021, against the decisions of the Commission, refer to 2021, and 1 lawsuits refers to the silence of administration, Administrative Court of Montenegro to the end of mentioned period resolved 1 lawsuits which refers to the silence of administration by which the procedure is suspended due to the abandonment of the claim filed by a plaintiff.

#### **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 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 2 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 2 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. The contracting authorities acted according to the decisions of the Commission for Protection of Rights in the mentioned period.

## **RESUME**

The Commission for the Protection of Rights in Public Procurement Procedures was constituted in 2012, the competencies and powers of which have been 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 increased to 1344 cases at the end of 2017. This increase in the inflow of cases was stopped primarily as a result of 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 entered into force in mid-2017, which improved certain deficient 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 in 2019, and 269 cases in 2020.

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. In the second half of 2021 the Commission for the Protection of Rights worked in an incomplete composition, i.e.

in the composition of 5 members, one of which is the Deputy President of the Commission, due to the fact that the Government of Montenegro at its session on 22 June 2021 adopted a Decision terminating the mandate of the President of the Commission for the Protection of Rights due to the expiration of the term for which he was appointed, while the Government of Montenegro at its session on 23 September 2021 passed a Decision on terminating the mandate of one member of the Commission for the Protection of Rights at the personal request, due to the acquisition of conditions for retirement. In the second half of 2021 public competitions have been announced for the president of the Commission for Protection of Rights and three members of the Commission for Protection of Rights, and those procedures are in progress.

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.

On June 15, 2021, the Commission sent to the Ministry of Finance and Social Welfare the Rulebook on Internal Organization and Systematization of the Professional Service of the Commission for the Protection of Rights in Public Procurement Procedures No. 09-44 / 10-2021 of June 3, 2021, for submission to the Government of Montenegro, for the purpose of its adoption. However, as the Commission for Protection of Rights did not receive a statement on whether the consent was given until the day of submitting this report, the Commission could not adopt the Personnel Plan for 2021, and consequently it could not announce the public competition, because the conditions for announcing the public competition were not fulfilled, so the tasks of the Secretary, have been performed by the independent advisor I. Namely, the mentioned Rulebook did not change the number of executors in relation to the current Rulebook on internal organization and systematization of the Professional Service of the Commission for Protection of Rights in Public Procurement Procedures No. 09-143 / 1-2020 27.07.2020, there has only been a harmonization with the new Law on Civil Servants and State Employees ("Official Gazette of Montenegro", No. 2 / 18,34 / 19 and 08/21) in terms of conditions for performers of tasks.

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), which started operating on January 1, 2021, the Commission's decisions are published on this electronic system, which ensures full transparency of its work.

In second half of 2021, in the period from July 7, to December 31, 2021 the Commission for the Protection of Rights had in total of 110 cases, out of which 17 cases transferred in 2021 (15 appeals, and 2 cases upon execution of the Administrative Court rulings of Montenegro) and 93 cases received in second half of 2021 (78 appeals, 13 cases upon execution of the Administrative Court rulings of Montenegro and 2 motions for reinstating the procedure), which resolved 96

cases (87.27%) while 14 cases remained unresolved (12.73%) due to the fact that they were received at the end of the reporting period ( at the end of December 2021).

In the reporting period, the Administrative Court of Montenegro submitted to the Commission for the Protection of Rights in Public Procurement Procedures 17 claims, out of which 5 claims were filed against the decisions of the Commission from the first half of 2021, 11 claims against the decisions of the Commission for the Protection of Rights from the second half of 2021, and 1 claim referred to the silence of administration. Out of 16 lawsuits received in the second half of 2021, against the decisions of the Commission, refer to 2021, and 1 lawsuit refers to the silence of administration, Administrative Court of Montenegro to the end of mentioned period resolved 1 lawsuit which refers to the silence of administration by which the procedure is suspended due to the abandonment of the claim filed by a plaintiff.

In the reporting period, the Commission for Protection of Rights received 21 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 13 judgments by which lawsuits were adopted and cases returned to the Commission for the Protection of the Right for reconsideration, 8 judgments rejecting the claims, and 1 decision by which the procedure is suspended due to the abandonment of the claim filed by a plaintiff. Out of which 19 claims refers to the decision of Commission which is resolved in 2019, and 2 judgments on the decisions of the Commission which is resolved in 2020.

In the mentioned period the Commission of the Protection of Rights received 2 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 2 judgments, all judgements the Supreme Court rejected the requests as unfounded.

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