



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

**WORK REPORT
COMMISSION FOR PROTECTION OF RIGHTS IN PUBLIC PROCUREMENT
PROCEDURES
FOR THE PERIOD January 01 to June 30, 2022**

July 2022

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1. INTRODUCTION

1.1. Legal basis for submitting the report

The provision of the Article 207 paragraph 1 of the Law of Public Procurement Procedures ("Official Gazette of Montenegro", number 74/19), stipulates that the Commission of the Protection of Rights in Public Procurement Procedures (hereinafter Commission for Protection of Rights) shall submit to the Government of Montenegro semi-annual report on its work for periods from 1 January to 30 June and from 1 July to 31 December of the current year, no later than 30 days from the expiry of the representative semester.

1.2. Legal protection in public procurement system

The main mechanism for protecting the legality and integrity of the public procurement process is the guaranteed right of access to justice to participate in public procurement procedures. In this regard, transparency and efficiency of public procurement procedures, competitiveness and adequate security measures against corruption and discrimination, institutional capacities, quality of decisions, as well as their implementation, are key elements of a functional system of rights protection in public procurement procedures.

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 and includes the protection of the rights and interests of interested business entities from the initiation of the public procurement procedure to the conclusion of the public procurement contract.

Post-contractual protection of rights is exercised before the Administrative and Supreme Court of Montenegro, as well as before the other regular courts.

Legal protection against the decisions of the Commission for the Protection of Rights is achieved before the Administrative Court of Montenegro, and it is initiated by filing a lawsuit to that court by bidders, contracting authorities or other interested parties. Legal protection before the Administrative Court of Montenegro essentially refers to the same stages of the public procurement procedure as legal protection before the Commission for the Protection of Rights, and it is considered to be post contractual legal protection for the reason that it is mainly realized after the conclusion of the public procurement contract, because in the case that the Commission for Protection of Rights rejects an appeal filed against the contracting authority's decision on the selection of the most advantageous bid, or if it suspends the appeal procedure due to the appellant's withdrawal from the stated appeal, the contracting authority may conclude a public procurement contract with the selected bidder without waiting for the deadline for filing a lawsuit to expire, hence a possible lawsuit filed with the Administrative Court of Montenegro in that case does not have a suspensive effect on further activities of the contracting authority. This situation is the result of the existing legal solutions according to which the public procurement contract can be concluded after the expiration of the appeal period, i.e. expiration

of the 10-day period from the date of publication of the decision on the selection of the most advantageous bid, i.e. after the publication of the decision of the Commission for the Protection of Rights, by which the appeal was rejected or the appeal procedure was suspended, whereby the deadline for filing a lawsuit against the decision of the Commission for the Protection of Rights is 20 days from the date of publication of the same decision on the Electronic Public Procurement System (hereinafter: ESPP) and on the website of the Commission for the Protection of Rights. Post-contractual legal protection before the Supreme Court of Montenegro refers to legal protection against the judgments of the Administrative Court of Montenegro passed on lawsuits against the decisions of the Commission for the Protection of Rights. Legal protection before the regular courts in Montenegro is achieved in relation to the realization of the right to compensation for damage to economic operators caused by violations of the Public Procurement Law.

2. BASIC INFORMATION OF THE COMMISSION FOR PROTECTION OF RIGHTS

2.1. Organization and status

The provision of Article 198 paragraph 1 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 of 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.

2.2. Competences and powers

In this reporting period, 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 filed 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 powers of the Commission for the Protection of Rights are established in Art. 191, 192 and 196 of the Law on Public Procurement, namely

- in the appeal procedure decides within the limits of the appeal allegations and, ex officio, shall take into account important violations, irrespective of the part of the public procurement procedure an appeal has been filed against;

- discontinues the appeal proceedings as a result of the appellant's withdrawal of the appeal,

- reject the appeal as unlawful, in a case it refers to decision or action of the contracting authority which was not allowed;

- reject an appeal as untimely, if it was filed after expiry of the stipulated time limit;

- reject an appeal as filed by an unauthorized person, if it was filed by a person who is not authorized for filing appeals in accordance with this Law;

- reject the appeal as incomplete, in case that the proof of payment for conducting the procedure was not submitted with the appeal and within the prescribed time limit for filing the appeal in accordance with this Law;

- reject the appeal as irregular, if the appellant within the specified deadline fails to remedy formal deficiencies that prevent acting upon the appeal;

- reject the appeal as unfounded, when it determines that the appeal allegations are entirely unfounded;

- accept the appeal in whole or in part, annul the decision or the public procurement procedure or action of a contracting authority in the part in which the unlawfulness has been established

- in case of material breach of the rules of procedure of public procurement, the Commission for Protection of Rights shall annul the decision or a part of the procedure or public procurement procedure in its entirety and

- if the contracting authority fails to submit with the appeal a complete documentation pertaining to the public procurement procedure, within the time limits, in the manner stipulated by this Law, the Commission for Protection of Rights shall annul the procedure or a part of the procedure.

In addition to the obligations prescribed by the current Law on Public Procurement ("Official Gazette of the Republic of Montenegro", No. 74/19), the Commission for the Protection of Rights is obliged to, upon resolving appeals against the decision and actions of contracting authority that have been made in accordance with Article 216, Paragraph 1 of this Law, which had been carried out in accordance with the previous Law on Public Procurement ("Official Gazette of Montenegro", no. 42/11, 57/14, 28/15 and 42/17) apply the provisions of that law.

2.3. Composition and method of works

The provision of Article 199 of the Law on Public Procurement stipulates that the Commission for Protection of Rights has a president and six members, who discharge offices professionally, the President of the Commission represents Commission for Protection of Rights, manages its work and performs other tasks in accordance with the Law and the Rules

of Procedure, as well as that the Commission for Protection of Rights may have a Deputy President, in accordance with the Rules of Procedure.

The provision of Article 200 of the Law on Public Procurement stipulates that the President and members of the Commission for Protection of Rights are appointed by the Government, at the proposal of the Ministry of finance, on basis of public competition and shall be appointed for a period of five years, and may be reappointed, the provision of Article 202 paragraph 1 of this Law stipulates that the president and member of the Commission of Protection of Rights may not exercise any other public office or office in a political party.

In the reporting period, the composition of the Commission for the Protection of Rights has changed so that the Government of Montenegro at the session held on February 24, 2022, adopted a Decision on the appointment of a member of the Commission for the Protection of Rights, by which it re-elected one member whose previous five-year mandate had expired, then at the same session issued a Decision on the appointment of one member of the Commission for the Protection of Rights, whereby one vacant position of a member of the Commission was filled, having been vacant since September 23, 2021, when the Government of Montenegro determined the termination of the mandate of one member of the Commission for the Protection of Rights upon personal request, due to the acquisition of conditions for retirement.

Also, the Government of Montenegro, at the same session held on February 24, 2022, issued a Decision on the termination of the mandate of one member of the Commission for the Protection of Rights due to the expiration of the term for which he was appointed, and in that period the Commission for the Protection of Rights worked in the composition of five members. However, the Government of Montenegro on April 28, 2022 has issued a Decision on the appointment of one member of the Commission, by which one vacant position of a member of the Commission was filled, that had been vacant since February 24, 2022, hence the Commission for the Protection of Rights has worked in the composition of six members as of April 28, 2022.

In the addition to above, a member of the Commission for the Protection of Rights, from July 23, 2021, performs the duties of deputy president of the Commission, because at the session held on July 22, 2021, the Government of Montenegro determined the termination of mandate of the previous president of the Commission for the Protection of Rights due to the expiration of the term for which he was appointed and, from April 11, 2022, one member of the Commission for the Protection of Rights is absent from work place, at the beginning due to using part of his annual leave, and after that due to temporary inability for work-sick leave, resulting in the fact that the Commission for the Protection of Rights in the reporting period worked with incomplete composition.

The provision of the Article 204 paragraph 1 of the PPL stipulate that the Commission of Protection of Rights shall work and decide on its sessions which are not public.

In accordance with it decides in private sessions, the work of the Commission for the Protection of Rights is characterized by a high degree of transparency, which is achieved through the public publication of all its decisions on the ESJN and on the Commission's website www.kontrola-nabavki.me.

2.4. Anticorruption activities and preventing Conflict of Interest

Anti-corruption action for the protection of rights is primarily achieved through examination and determination of the legality of actions and decisions of the contracting authority in the appeal procedure of interested persons or bidders, in the Article 196 of the Law on Public Procurement, in addition to deciding on complaints, shall take into account important violations referred to in Article 195 of this Law, irrespective of the part of the public procurement procedure an appeal has been filed against, with the possibility of annulling the decision, that is, the actions or decisions of the contracting authorities that are determined to have been implemented, i.e. adopted contrary to the law and preventing the conclusion of public procurement contracts based on illegal decisions on the selection of the most favourable offer, as well as preventing the conclusion and implementation of contracts between persons related by status and interest and with other recognizable forms of potential corrupt behavior.

The purpose of the anti-corruption action of the Commission for the Protection of Rights is reflected in the fact that she acts in the performance of her duties within her competence and takes measures before the occurrence of certain harmful consequences, in which way it prevents the manifestation and realization of potentially corrupt activities of participants in the public procurement process. In addition, the cancellation of public procurement procedures in which market competition is not ensured or the equality of bidders and public procurement procedures in which the bidder is not required to fulfil the conditions and obligations prescribed by law, as well as the cancellation of the decision on the selection of the most favourable offer which it is not lawfully established that the selected tenderer fulfils all the stipulated conditions and obligations, and therefore preventing and making it impossible to sign contracts based on illegal actions, represents the most powerful form of anti-corruption action of the Commission for the Protection of Rights.

Also, the anti-corruption action of the Commission for the Protection of Rights is achieved through the public publication and wide availability of its decisions, which are published on ESJN and on the Commission's website www.kontrola-nabavki.me, after its adoption, i.e. no later than within three days of its adoption.

All decisions of the Commission for the Protection of Rights are published in their original form and with full content, which achieves two very important anti-corruption goals:

- education of participants in the public procurement process, all interested parties and as well the public in relation to legal practice and the positions of the Commission for the Protection of Rights and
- absolute transparency of public procurement procedures and the work of the Commission for the Protection of Rights.

The provision of Article 202 paragraph 2 of the Law on Public Procurement stipulates that the president and member of the Commission for the Protection of Rights cannot decide in the procedure of protection of rights if there are reasons that cast doubt on their impartiality in accordance with the law, how to ensure impartiality and objectivity in work and the decision 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.

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, and the results are available simultaneously to all interested parties.

2.5. Legal Department of the Commission of the Protection of Rights

The provision of the Article 208 paragraph 1 of the Law on Public Procurement stipulates that the Commission for the Protection of Rights shall have Legal Department that carries out professional and administrative technical tasks necessary for the work of the Commission, while Paragraph 2 of this Article stipulates that the Legal department is managed by the Secretary of the Commission for the Protection of Rights.

In 2021, the legal department of the Commission for the Protection of Rights worked according to the valid Rulebook on the 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 which 16 jobs were filled.

2.6. Professional training and participation in working bodies

Members of the Commission for the Protection of Rights and employees of the Legal Department of the Commission for the Protection of Rights attended direct and online workshops organized on the topic of public procurement by domestic and foreign organizations.

One member of the Commission for the Protection of Rights is a member of the Working Group for the preparation of negotiations on the accession of Montenegro to the European Union for the area of the acquis of the European Union related to the negotiation chapter 5 - public procurement, which was formed by the Government of Montenegro at the session of September 16, 2021.

2.7. Financing and financial operation of the Commission for Protection of Rights

The provision of the Article 198 paragraph 4 of PPL stipulates that the funds for the work of the Commission for Protection of Rights are provided in the budget of Montenegro. Gore.

By the Law on Budget of Montenegro for 2022, the amount of EUR 401,892.03 have been allocated to the Commission for the Protection of Rights, from which amount, 163,122.50 euros was spent in the first half of the year.

2.8. The fee for initiating the appeal proceeding

The provision of Article 188 paragraph 3 and 4 of Law on Public Procurement Procedure stipulates that the appellant is obliged to attach with 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 expiry of the time limit for logging the

appeal , as well as that the amount of fee cannot exceed EUR 20.000,00 ,but paragraph 5 of this Article stipulates that if a decision is made in the appeal proceedings in the appellant's favour, the Commission for Protection of Rights shall return the fee to the appellant, within 15 days, from the date of the decision on the appeal becomes final and enforceable.

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.

In the period of January 01,2022 to June 30, 2022, 329.630,22 was paid for the fee for initiating the appeal proceedings, while in the same period, 128.390,58 was returned by Commission , 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.

2.9. 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.

2.10. 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.

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

3.1. Cases in progress

In the first half of 2022 in the period from January 01 to June 30,2022, the Commission for the Protection of Rights had a total of 105 cases, ot of which: 99 appeal (out of which 14 cases transferred from 2021) and 6 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 2021	14
Cases received in the first half of 2022	91
Total:	105

3.2. Total number of resolved and unresolved cases the Commission for the Protection of Rights had in its work in the first half 2022

In the first half 2022 the Commission for Protection of Rights had in total 105 cases, out of which 89 cases were resolved (84,76%), while 16 cases remained unresolved (15,24%).

Spreadsheet: The provision of the Article

Case type	In total	Resolved	%	Unresolved	%
Appeal cases	99	83	83,84%	16	16,16%
Cases upon execution of the Administrative Court rulings	6	6	100%	0	0%
Total:	105	89	84,76%	16	15,24%

The provision of the Article 193 of PPL stipulates that the Commission for Protection of Rights adopt the decision within 30 days as of the day of submission of the appeal and compete case files, there paragraph 2 of this Article stipulate that the deadline may be extended for a maximum 10 days in the event of the engage an expert witness, to obtain the opinion of the competent authorities and the volume of the documentation in the public procurement procedure of which appellant and cotracting authority shall be notified.

At the end of the reporting period, 16 cases remained unresolved due to the fact that they were received during June 2022.

3.3. Cases of the Commission for the Protection of Rights in the first half of 2022 by type of procedure

3.3.1 Appeal cases

Out of total 99 appeal cases, the Commission for the Protection of Rights in the first half of 2022, resolved 83 appeal cases.

Spreadsheet of cases on the date June 30,2022:

Total number of appeal cases in the first half of 2022	Resolved cases in the first half of 2022	Unresolved cases in the first half of 2022
99	83	16
Precentage	83,84%	16,16%

3.3.2 Cases upon execution of the Administrative Court rulings

In the reporting period the Commission had 6 cases upon execution of the Administrative Court rulings, all cases received in the first half of 2022

Total number of cases upon execution of the Administrative Court rulings of Montenegro in the first half of 2022	Resolved cases upon execution of the Administrative Court rulings of Montenegro in the first half 2022	Unresolved cases upon execution of the Administrative Court rulings of Montenegro in the first half of 2022
6	6	0
Precentage	100%	0%

4. DATA OF APPEAL CASES

4.1. Number of resolved appeals in dockets by phases of procedure

The provision of the Article185 paragraph 3 of PPL stipulates that an appeal may be filed against: tender documentation, changes and/or supplements to the tender documentacion, decision on exclusion from a public procurement procedure, decision on selection on most advantageous bid, and decision on annulment of the public procurement procedure. The provision of the Article 186 paragraph 1 of PPL stipulate that an appeal may be filed against tender documentation and changes and/or supplements to the tender documentacion by an economic operator no later than ten days before the determined date of opening of qualification applications or bids, then paragraph 2 of this Article stipulate that may be filed by a qualification

applicant within ten days as of the day of supply of the decision on exclusion from a public procurement procedure, and paragraph 3 of this Article stipulate that may be filed by a candidate or bidder within ten days as of the day of publication of decision on selection of the most advantageous bid or decision on annulment of a public procurement procedure.

Out of total number of resolved cases (83), in the reporting period Commission for Protection of Rights resolved: 15 appeals filed on Tender Documentation, 1 appeal filed on changes and/or supplements to the tender documentation, 61 appeal filed against the Decision on selection of the most favorable bid, and 6 appeal filed against the Decision on annulment of the public procurement procedure.

Appeal field against:	Number of appeals
Tender documentacion	15
Appeal filed on changes and/or supplement to the tender documentation	1
Decision on selection on most favorable bid	61
Decision on annulment of the public procurement	6
Total:	83

4.2. 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: 79 complaints filed in an open public procurement procedure and 4 appeal upon negotiated procedures without prior publication of contract notice.

Open public procurement	79
Negotiated procedures without prior publication of contract notice	4
Total:	83

4.3. 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: 38 complaints were resolved in relation to public procurement procedures in which the subject of procurement were goods, 11 complaints were resolved in relation to public procurement procedures in which the subject of procurement were works i 34 complaints were resolved in relation to public procurement procedures in which the subject of the procurement were services.

Goods	38
Works	11
Services	34
Total:	83

4.4. Structure of appellant

Appellant	Number of appeals
Domestic companies (LTD, Joint Stock....)	79
Consortium of domestic companies	3
Consortium of domestic and foreign companies	1
Total:	83

4.5. Manner of resolving appeal cases

Spreadsheet of manner of resolving appeal cases

Type of decision	Number of appeals
Reject the appeal as unfounded	7
Reject the appeal as incomplete	2
Reject the appeal as untimely	2
Accepted appeal	32
Partially accepted appeal	22
Partially accepted appeal and due to the appeal ex officio, the public procurement procedure was annulled partially	1
The procedure was suspended due to the appellant's withdrawal from the appeal	4
Due to the appeal ex officio, the public procurement procedure was annulled in its entirety	10
Due to the appeal ex officio, the public procurement procedure was annulled partially	3
Total:	83

4.6. Decisions of the Commission in which are determined important violations of this Law

The provision of the Article 196 of the PPL stipulates that the Commission for Protection of Rights, ex officio, shall consider important violations, irrespective of the part of the public procurement procedure an appeal has been filed against, which Article 195 paragraph

1 of this Law stipulate that significant violations of the rules of public procurement procedure shall be the following:

- 1) the implementation of public procurement procedure referred to in Article 59 of this Law contrary to the opinion of the Ministry, except in the case referred to in Article 59 paragraph 1 item 3 of this Law;
- 2) if the tender documentation does not contain mandatory conditions for participation in the public procurement procedure and/or mandatory grounds for exclusion from the public procurement procedure;
- 3) if the contracting authority, contrary to Article 187 paragraph 1 of this Law, continues the procedure prior to rendering of the decision on appeal;
- 4) if the decision on selection of the most advantageous bid fails to decide upon all submitted bids;
- 5) if a contracting authority acts contrary to Article 95 paragraph 2 and 3 of this Law,

And paragraph 2 of this Law stipulate that in the event of material breach of the rules of procedure referred to in paragraph 1 of this Article, the Commission for Protection of Rights shall annul the decision or a part of the procedure or public procurement procedure in its entirety.

Deciding on the reported complaints in the first half of 2022, and in connection with the public procurement procedures carried out under the Law on Public Procurement ("Official Gazette of Montenegro", number 74/19), the Commission for the Protection of Rights determined that:

- 1) in 6 cases, significant violations of the Law were committed in the public procurement procedure, from Article 195 paragraph 1 paragraph 3 of the PPL (the contracting authority, contrary to Article 187 paragraph 1 of this Law was continued the procedure prior rendering of the decision on appeal);
- 2) in 3 cases, significant violations of the Law, were committed in the public procurement procedure, from Article 195 paragraph 1 st 4 of the PPL (the contracting authority, the decision on selection of the most advantageous bid fails to decide upon all submitted bids);
- 3) in 4 cases significant violations of the Law, were committed in the public procurement procedure, from Article 195 paragraph 1 st 5 of the PPL (the contracting authority, contrary to Article 95 paragraph 2 and 3 of this Law, which is stipulated that the contracting authority shall, depending on their type of the public procurement procedure, publish or supply clarification of the tender documentation via EPPS with no delay and at the latest five days as of the day of receipt of the request from paragraph 1 of this Article, as well as stipulated that clarification of tender documentation shall not be used as a means of amending the tender documentation).

The contracting authorities whose part of the public procurement procedure was annulled ex officio are: Health institution Pharmacy of Montenegro "Montefarm" (the same public procurement procedure was partially annulled twice), Post of Montenegro, Podgorica (for lot 2) and the Clinical Centre of Montenegro, while the employees were ex officio annulled the public procurement procedure in its entirety: Public Works Administration, Montenegrin Electricity Distribution System Podgorica (for lot 2, with the fact that two appeals were filed

for the same public procurement procedure), Tax administration of Montenegro, JZU Hospital Bijelo Polje (lot 1 and 2), Health Centre Podgorica, „Monteput" DOO Podgorica, Post of Montenegro, Podgorica, Municipality of Herceg Novi and Montenegrin Electricity Distribution System Podgorica.

The total estimated value of public procurement procedures (9 procedures) that the Commission for the Protection of Rights ex officio annulled in its entirety, according to the current Law on Public Procurement ("Official Gazette of Montenegro", number 74/19), amounts to EUR 11,215,853.73 .

4.7. Decision-making time on appeals

In the first half of 2022, the Commission for the Protection of Rights in Public Procurement Procedures had a total of 99 appellate cases and resolved 83 appellate cases which were resolved under the new Law on Public Procurement ("Official Gazette of Montenegro", No. 74/19).

In the first half of 2022, 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.

5. CASES BY JUDGMENTS OF THE ADMINISTRATIVE COURT OF MONTENEGRO

The provision of the Article 197 paragraph 1 of PPL stipulate that an administrative dispute may be initiated against a decision of the Commission for Protection of Rights.

In the reporting period, the Commission for Protection of Rights received 12 rulings and 3 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:

- 6 judgments by which lawsuits were adopted and cases returned to the Commission for the Protection of the Right for reconsideration.
- 6 judgments rejecting the claims and
- 3 decisions by which the procedure is suspended due to the abandonment of the claim filed by a plaintiff.

Out of the 6 judgments by which the claims were adopted and which returned to the Commission for the Protection of Rights for reconsideration:

- 5 judgments referred to the decisions of the Commission from 2020 and
- 1 judgment referred to the decisions of the Commission from 2018.

Out of the 6 judgments rejecting the claims:

- 1 judgment referred to the decisions of the Commission from 2021,
- 4 judgments referred to the decisions of the Commission from 2020 and
- 1 judgment referred to the decisions of the Commission from 2019.

Out of the 3 decisions by which the procedure is suspended due to the abandonment of the claim filed by a plaintiff, 1 referred to the decision of the Commission from 2021, and 2 decisions referred to the Commission from 2020.

6. 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 2 judgments the Supreme Court rejected the requests as unfounded, while in one judgment he adopted the request for examination of the court decision and changed the decision of the Administrative Court of Montenegro, but only in the part of the decision on the costs of the dispute.

7. 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 7 claims were filed against the decisions of the Commission from the 2021, and 8 claims against the decisions of the Commission for the Protection of Rights from 2022.

Therefore, in relation to the total number of decisions made by the Commission in the first half of 2022. (89 decisions), 8 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 8.98%, 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 first half of 2022, in 91.02% of cases the contracting authorities and the bidders considered that the decisions of the Commission of the Protection of Rights were legitimate.

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

The provision of Article 192, paragraph 3 of the 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 3 of the same article of this Law, the

Commission for Protection of Rights shall notify the Ministry and the public procurement inspector thereof.

In the reporting period, acting in accordance with the provisions of Article 192 paragraph 4 of the Law on Public Procurement, the Commission for the Protection of Rights informed the Inspectorate for Public Procurement and the Ministry of Finance that two clients (Clinical Center of Montenegro and Health Institution Pharmacy of Montenegro "Montefarm") were not acted according to the decisions of the Commission for the Protection of Rights, after which the mentioned contracting parties acted according to the decisions of the Commission for the Protection of Rights and informed the same about it. The Commission for the Protection of Rights informed the Public Procurement Inspectorate about the aforementioned procedure.

RESUME

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 Commission for Protection of Rights has a president and 6 members. The President and members of the Commission are appointed by the Government of Montenegro, on the proposal of the Ministry, on the basis of a public competition, for a period of 5 years. In the reporting period, the composition of the Commission for the Protection of Rights has changed so that the Government of Montenegro at the session held on February 24, 2022, adopted a Decision on the appointment of a member of the Commission for the Protection of Rights, by which it re-elected one member whose previous five-year mandate had expired, then at the same session issued a Decision on the appointment of one member of the Commission for the Protection of Rights, whereby one vacant position of a member of the Commission was filled, having been vacant since September 23, 2021, when the Government of Montenegro determined the termination of the mandate of one member of the Commission for the Protection of Rights upon personal request, due to the acquisition of conditions for retirement. Also, the Government of Montenegro, at the same session held on February 24, 2022, issued a Decision on the termination of the mandate of one member of the Commission for the Protection of Rights due to the expiration of the term for which he was appointed, and in that period the Commission for the Protection of Rights worked in the composition of five members. However, the Government of Montenegro on April 28, 2022 has issued a Decision on the appointment of one member of the Commission, by which one vacant position of a member of the Commission was filled, that had been vacant since February 24, 2022, hence the Commission for the Protection of Rights has worked in the composition of six members as of April 28, 2022. In the addition to above, a member of the Commission for the Protection of Rights, from July 23, 2021, performs the duties of deputy president of the Commission, because at the session held on July 22, 2021, the Government of Montenegro determined the termination of mandate of the pervious president of the Commission for the Protection of Rights due to the expiration of the term for which he was appointed and, from April 11, 2022, one member of the Commission for the Protection of Rights is absent from work place, at the beginning due to using part of his annual leave, and after that due to temporary inability for work-sick leave, resulting in the fact that the Commission for the Protection of Rights in the reporting period worked with incomplete composition.

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, 16 job positions were filled.

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

In the first half of 2022, the Commission for Protection of Rights had in total of 105 cases, 99 appeals (out of which 14 cases transferred in 2021) and 6 cases upon execution of the Administrative Court rulings of Montenegro, out of which 89 were resolved (84,76%), while 16 cases remained unresolved (15,24%), since they received during June 2022. In the reporting period, the Commission for the Protection of Rights did not have any appeals against the procedure for awarding public-private partnership contracts.

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 7 claims were filed against the decisions of the Commission from the first half of 2021, 8 claims against the decisions of the Commission for the Protection of Rights of 2022. In relation to the total number of decisions made by the Commission in the first half of 2022, (89 decisions) 8 lawsuits were submitted to the Administrative Court of Montenegro, which is 8.98%. It follows from the above that in 91.02% of cases, bidders and clients considered that the decisions of the Commission for the Protection of Rights made in the first half of 2022 were legal.

In the reporting period, the Commission for Protection of Rights received 12 rulings and 3 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 6 judgments by which lawsuits were adopted and cases returned to the Commission for the Protection of the Right for reconsideration, 6 judgments rejecting the claims, and 3 decision by which the procedure is suspended due to the abandonment of the claim filed by a plaintiff, out of which 1 claims refers to the decision of Commission which is resolved in 2021, and 9 judgments on the decisions of the Commission which is resolved in 2020, 1 judgments on the decisions of the Commission which is resolved in 2019, 1 judgments on the decisions of the Commission which is resolved in 2018, while 1 decision suspending the proceedings due to the plaintiff's withdrawal from the filed lawsuit refers to the Commission's decision made in 2021, and 2 decisions of the Commission which is resolved in 2020.

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 2 judgments, all judgements the Supreme Court rejected the requests as unfounded, while in one judgment he adopted the request for examination of the court decision and changed the decision of the Administrative Court of Montenegro, but only in the part of the decision on the costs of the dispute.

The above data clearly indicate that the Commission for the Protection of Rights has from the beginning of the application of the new Law on Public Procurement achieved significant results in terms of protecting the rights and legal interests of all participants in initiated and implemented public procurement procedures which were the subject of her work in the first half

of 2022 and that significantly contributed to the development of the public procurement system in Montenegro.

The adoption of the new Law on Public Procurement ("Official Gazette of Montenegro", number 74/19), the previous normative solutions were significantly improved and new institutes, procedures were prescribed, which are largely harmonized with the current directives of the European Union.

Also, this law additionally improved the transparency and efficiency of public procurement procedures, especially with the introduction of EPPS, which results in better effectiveness and safety of procedures, as well as cost reduction for both contracting parties and bidders

The introduction of new procedures and special forms of public procurement made it possible for the contracting authorities, according to their needs and the specifics of the subject of the procurement, initiate and implement procedures that will enable them to reach the highest quality technical, technological, and functional solutions for the invested money, and thus to the adequate satisfaction of common or general interests and needs of citizens.

The current application of the new Law on Public Procurement, it also showed certain disadvantages, which cause dilemmas and different interpretations, and thus problems in application, and it is necessary to look at them thoroughly and eliminate them in a timely manner with adequate changes and amendments of the law.

In addition to the above, in the future it is necessary to organize appropriate thematic seminars that will be attended by clients and bidders, as indispensable elements of public procurement procedures, who, with their knowledge and experience in the implementation of public procurement procedures, can contribute to a high-quality overview of numerous situations, and thus to the improvement of regulation and practice in the field of public procurement.

At the end, the Commission for the Protection of Rights will, as before, strive to meet all the challenges presented by the dynamic field of public procurement, to successfully overcome with professional and responsible work, and to fulfil the extremely important competences entrusted to it by law, implemented in a way that supports the overall meaning and purpose of prescribing rules for the implementation of public procurement procedures, in terms of efficiently meeting the needs of the widest range of users through the rational disposal of public funds.

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