



**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 December 31, 2024**

June 2025

(unofficial translation)

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1. INTRODUCTION

The provision of Article 198 paragraph 1 of the Law on Public Procurement (“Official Gazette of Montenegro”, No. 74/19, 3/23, 11/23 and 84/24) stipulates that the Commission for Protection of Rights (in the following text: 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 and 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.

In the reporting period, the Commission for the Protection of Rights did not work on any case of protection of rights in the field of public-private partnership, so the Report refers to the work and results of the Commission for the Protection of Rights regarding the protection of rights in public procurement procedures.

The provision of Article 207 paragraph 2 of the Law on Public Procurement stipulates that the Commission for Protection of Rights submits to the Parliament of Montenegro for adoption an annual report on its work, no later than June 30 of the current year, for the previous year.

2. BASIC INFORMATION OF THE COMMISSION FOR THE PROTECTION OF RIGHTS

2.1. Competences of the Commission for the Protection of Rights

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

- 1) decide on appeals field in public procurement and public-private partnership procedures;
- 2) inform inspection and other competent authorities about observed illegal 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.

In addition to the obligations prescribed by the current Law on Amendments in Public Procurement (“Official Gazette of the Republic of Montenegro”, No. 3/23,11/23 and 84/24),during

the reporting period 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 214, Paragraph 1 of this Law, that were initiated prior to the application of this Law ("Official Gazette of Montenegro", no. 74/19) shall be completed according to the regulations by which there were started.

2.2. Composition and method of works

The provisions of Article 199 of the Law on Public Procurement ("Official Gazette of Montenegro", No. 74/19, 3/23, 11/23 and 84/24) stipulates that the Commission for the Protection of Rights has a president and six members, who perform their duties professionally, the president of the Commission for the Protection of Rights represents the Commission for the Protection of Rights, manages its work and performs other tasks in accordance with the law and 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 shall be appointed by the Parliament of Montenegro (hereinafter: the Parliament) on the proposal of the competent working body, based on public invitation, the Parliament of Montenegro on the 28th convenes at the Second Session of the First Regular (Spring) Session in 2024, on April 4, 2024, passed the Decision on the appointment of one member of the Commission for the Protection of Rights, since when the Commission for the Protection of Rights has been working in full composition consisting of the president and six members of the Commission for the Protection of Rights, since the Parliament of Montenegro is of the 28th convocation, at the Seventh Session of the Second Ordinary (autumn) session in 2023, on December 29, 2023 adopted Decisions on the appointment of the president and five members of the Commission for the Protection of Rights.

Namely, one member of the Commission for the Protection of Rights has submitted their resignation, since August 28, 2024, the Commission for the Protection of Rights has been operating with five members. Consequently, on November 15, 2024, the Administrative Committee of the Parliament of Montenegro announced a public call for the appointment of one member of the Commission for the Protection of Rights. At the session of the Administrative Committee of the Parliament of Montenegro held on December 24, 2024, a proposal for the Decision on the appointment of one member of the Commission was determined and submitted to the Parliament of Montenegro for further procedure.

The method of work of the Commission for the protection of Rights prescribed by Article 204 of the Law on Public Procurement, which stipulates that the Commission for the Protection of Rights works and decides at sessions that are not public, and that the method of work of the Commission for the Protection of Rights is governed by the Rules of Procedure. The Rules of Procedure of the Commission for the Protection of Rights stipulate that the Commission for the Protection of Rights works and decides in councils of three members and councils in extended composition, depending on the specific needs of the case to be discussed at the session. At the council session, voting is public, with council members declaring for and against proposed decisions. During the 2024, the Commission for the Protection of Rights held 107 sessions.

2.3. Anti-corruption and prevention of conflicts 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 consideration significant violations from 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 favorable 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 favorable 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 ESPP 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.

2.4. 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, while paragraph 6 of this Article stipulates that the Legal Department of the Commission for the Protection of Rights shall be regulated by the act on internal organization and systematization, which shall be determined by the Commission for Protection of Rights with the consent of the competent working body of the Parliament of Montenegro.

Strengthening the Commission for the Protection of Rights, as a key body in the public procurement system, which is also responsible for the development of the public procurement system as a whole, is necessary because it achieves the overriding goal of this appeals body - the protection of bidders' rights and the improvement of the public procurement system.

Complaints in the work of the Commission for the Protection of Rights in Public Procurement Procedures are becoming more and more complex, with an increasing number of allegations of complaints, and with a number of attached evidence and facts, and additional human resources enable better developed legal protection, reduction of the number of days for deciding on complaints, increased transparency of procedures, as well as an even more intensive fight against corruption.

For this reason, during the reporting period, a new Rulebook on the internal organization and systematization of the Legal Department of the Commission for the Protection of Rights was drafted, to which the Parliament of Montenegro - Administrative Committee gave its consent, and which systematized 13 job positions with 27 executors, out of which Secretary of the Legal Department, 13 civil servants in the title of independent adviser, one in the title of senior adviser, 11 independent clerks and one senior clerk.

After obtaining the consent of the Ministry of Finance and the Human Resources Administration for the Personnel Plan, and receiving confirmation from the Ministry of Finance regarding the secured financial resources for the six vacant positions, the Commission for the Protection of Rights, through the Human Resources Administration, initiated the procedure for announcing the job openings, considering that the job occupancy rate was 52% in relation to the applicable Rulebook. As of December 31, 2024, the mentioned job announcements are in process with the Human Resources Administration.

As of December 31, 2024, 14 persons were employed in the Legal Department of the Commission for the Protection of Rights.

By filling the vacant positions foreseen by its systematization, the numerous requests of the European Commission presented in the Reports on the Progress of Montenegro, regarding the strengthening of the administrative capacities of this Commission, would also be answered. The recommendation on strengthening administrative capacities was also implemented in the Montenegro's Program of Accession to the European Union 2023-2024, where it is stated that in accordance with the recommendations from the Report on Montenegro for the 2022 for the chapter - public procurement, it is planned to strengthen the administrative capacities of relevant institutions, i.e. Commission for the Protection of Rights. Also, in the final report of the World Bank on the assessment of the public procurement system in Montenegro, which was done according to the MAPS methodology (Methodology for Assessing Procurement Systems), it was

mentioned as one of the recommendations that the internal capacities of this Commission need to be especially strengthened.

2.5. Professional training and participation in working bodies

During 2024, regional and international cooperation in the field of public procurement continued, so that representatives of the Commission for the Protection of Rights attended a meeting with representatives of SIGMA, where a new set of Public Administration Principles was presented, and held a meeting with representatives of SIGMA on the topic of public procurement. Representatives of the Commission took part in the panel discussion "Corruption in Public Procurement - Why There Is No Criminal Liability" organized by the Institute of Alternatives, with the support of the Embassy of the Kingdom of the Netherlands in Serbia and Montenegro, through the MATRA support program, and a workshop was held for the Commission for the Protection of Rights, on the topic "Public Procurement Procedure in Practice" organized by Temporis and SIGMA/OECD.

In the reporting period, the strengthening of the Network of Public Procurement Bodies of South East Europe continued, and representatives of the Commission for the Protection of Rights attended the conference "Procedures and Remedies for Legal Protection", organized by the Commission of Bosnia and Herzegovina, with the aim as a platform for open dialogue and exchange of knowledge, focusing on challenges and opportunities in public procurement processes for all member countries of the Network. At the conference, practical experiences, discussions, examples of good practice of the countries from the Network were exchanged, with the aim of achieving transparency, efficiency and cooperation in public procurement. Also, representatives of the Commission for the Protection of Rights attended the workshop "Legal Protection in Construction Projects and Public Procurement" held in Ankara, while the representative of the Commission for the Protection of Rights attended the meeting of the Network of First Instance Appellate Bodies in Public Procurement, held in Zagreb.

During 2024, regional and international cooperation in the field of public procurement continued, so that representatives of the Commission for the Protection of Rights took part in the IV Regional Conference on Public Procurement - Application in Practice, in Becici, Budva, organized by the Institute of Economics and Law, then the Adriatic Forum on Public Procurement and Finance, in Portorož, Slovenia, and the conference "Next Generation Procurement" in Rome, Italy.

The President of the Commission for the Protection of Rights and the Secretary of the Commission for the Protection of Rights are members of the Working Group for the preparation and management 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 held on February 8, 2024. Also, the Secretary of the Commission for the Protection of Rights is a member of the Working Group for monitoring the implementation of the public finance management reform program for the period 2022-2026, which was established by the Government of Montenegro, at the session held on April 11, 2024.

2.6. 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.

By the Law on Budget of Montenegro for 2024, the amount of EUR 362.988,62 has been allocated to the Commission for the Protection of Rights. In 2024, the Commission for the Protection of Rights submitted a Request to the Ministry of Finance for the provision of additional funds for gross salaries and employer-borne contributions, as well as for other necessary resources required for the operation and functioning of the Commission for the Protection of Rights.

Pursuant to the Conclusion of the Government of Montenegro No. 08-426/24-31912/2 of 11 July 2024, approval was granted for the reallocation of funds from the spending unit of the Ministry of Finance to the spending unit of the Commission for the Protection of Rights in Public Procurement Procedures, in the amount of €145,000.00, whereby the current budget for 2024 amounted to €507,988.62.

	Position	Budget Plan	Current budget	Spent
4111	Net earnings	218.061,50	314.738,89	276.066,34
4112	Income tax	13.378,62	19.417,42	18.903,86
4113	Contributions on expences of the employee	42.395,26	61.236,67	49.312,07
4114	Contributions on expences by the employer	19.157,83	26.694,39	19.453,08
4115	Municipal surtax	2.006,79	2.912,63	2.835,68
4124	Jubilee awards	240,00	240,00	216,00
4125	Servance pay	1.650,00	1.650,00	1.533,70
4127	Other fees	1.764,00	1.764,00	0,00
4131	Administrative material	6.985,00	8.985,00	8.803,52
4133	Material for special purpose	1.900,00	1.900,00	1.434,06
4135	Fuel expenses	3.812,50	3.812,50	1.891,88
4141	Official travel	4.760,00	4.760,00	3.663,45
4142	Representation	1.543,31	1.543,31	1.269,93
4143	Comunication services	5.727,00	5.727,00	5.068,67
4144	Banking services	600,00	600,00	501,23
4146	Advocacy, notary and legal services	270,00	270,00	13,31
4147	Consulting srrvices, projects and studies	8.120,00	11.925,00	6.400,62
4148	Proffesional training seervices	3.000,00	3.000,00	0,00
4149	Other services	4.076,81	4.076,81	4.050,98

4153	Ongoing equipment maintenance	3.000,00	3.000,00	2.474,84
4191	Expences based on the payment of the work contract	2.139,00	2.139,00	1.498,96
4192	Expences based on the costs of court proceedings	7.000,00	9.000,00	5.354,00
4193	Development and maintance of softwer	1.350,00	1.350,00	1.331,00
4194	Insurance	4.200,00	4.200,00	2.780,39
4195	Contributions of memberships in domestic and international organizations	500,00	500,00	0,00
4318	Other transfers to individuals	1.500,00	1.695,00	1.690,00
4415	Expediture on equipment	3.850,00	10.850,00	10.836,38
4630	Repayment of obligation from earlier period	1,00	1,00	0,00
	TOTAL	362.988,62	507.988,62	427.383,95

2.7. The fee for conducting the appeal proceeding

The provision of Article 188, paragraphs 3 and 4 of the Law on Public Procurement stipulates that complainant shall attach to the complaint the proof of payment of the fee for initiating the appeal procedure, in the amount of 1% of the estimated value of the public procurement, or to submit this proof of payment no later than the expiry of the deadline for the appeal, provided that the amount of the fee cannot exceed EUR 20,000.00, and paragraph 5 of this Article stipulates that if in the appeal procedure it was decided in favor of the complainant, the Commission for the Protection of Rights is obliged to return the amount of the paid fee to the complainant within 15 days from the date of the finality of the appeal decision.

The fee for conducting the appeal procedure shall be paid to the account of the Commission for the Protection of Rights No. 530-20240-15 and foreign currency lot 00-511-0005007.6, in NLB Montenegro bank AD Podgorica.

In the period from January 1, 2024 to December 31, 2024, EUR 1,385,279.29 was paid on the basis of fees for conducting the appeal procedure, while in the same period, the Commission for the Protection of Rights, after determining the finality of its decisions, returned the amount of EUR 907,110.89 to the complainants in whose favor the decision was made. In the same period, EUR 158,141.03 was paid into the budget of Montenegro, in accordance with Article 188, paragraph 7 of the Law on Public Procurement. The remaining amount of the paid funds is in the account of the Commission for the Protection of Rights until the final decision is made on the appeals to which the funds have been paid.

2.8. Office space

The Commission for the Protection of Rights uses adequate state-owned business premises, which it is located at 28 Novaka Miloševa Street in Podgorica.

During the reporting period, the Commission for the Protection of Rights carried out a number of activities to improve the functioning of the work, and the following:

- Considering that all communication in public procurement procedures is conducted through the Electronic Public Procurement System (hereinafter – EPPS), adequate computer equipment and other technological equipment was procured, meeting all relevant standards and satisfying the basic operational needs;
- In cooperation with the State Property Administration, carried out the necessary procurement of equipment for video surveillance and access control of premises;
- With the aim of contributing to waste recycling and environmental protection, initiated that all paper waste collected daily in the course of its work, after being properly destroyed, be deposited in a designated container and transported to a recycling center.

In this regard, in the forthcoming period, the Commission for the Protection of Rights will initiate the adaptation of the basement premises in order to create adequate conditions for the storage of archival material.

2.9. Publicity of work

The transparency of the work of the Commission for the Protection of Rights is primarily ensured through its website www.kontrola-nabavki.me, which contains all relevant data and information related to the system of legal protection in public procurement procedures in Montenegro, as well as information on the work of the Commission for the Protection of Rights. The website provides detailed information and instructions on the appeal procedure, as well as all decisions of the Commission. In addition, the decisions of the Commission for the Protection of Rights are also published on the EPPS, thereby ensuring full transparency of its work and fulfilling its educational and preventive function, as the positions taken on disputed issues directly contribute to the establishment of consistent legal practice and reduce the risk of illegality in future public procurement procedures.

The Law on Public Procurement prescribes the obligation of the Commission for the Protection of Rights with regard to the publication of notices on initiated administrative disputes and decisions on lawsuits. Accordingly, the Commission for the Protection of Rights publishes the above on its website and on the EPPS, thereby enabling the monitoring of the legality of individual decisions of the Commission for the Protection of Rights and further ensuring the transparency of its work.

Namely, the work of the Commission for the Protection of Rights would be facilitated if the Administrative Court of Montenegro had access to the EPPS, which would reduce the costs of the

Commission for the Protection of Rights related to printing complete case files submitted to the Court, given that the case files are available on the EPPS.

In the reporting period, the Commission for the Protection of Rights initiated the process of upgrading its website, which, in the forthcoming period, will enable the search of the Commission's decisions based on various criteria. However, the Commission for the Protection of Rights does not possess an electronic case management platform, which would provide for greater transparency and efficiency of work. Namely, such a platform would allow for better monitoring of case flow, consistent application of legal practice in identical and/or similar factual situations, as well as more efficient preparation of certain statistical and professional reports, and reports on its work submitted to the Parliament of Montenegro. For these reasons, in the Draft Budget of Montenegro for 2025, the Commission for the Protection of Rights requested that the necessary financial resources for this purpose be provided.

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

3.1. Cases in progress

In 2024, the Commission for the Protection of Rights had a total of 407 cases in its work, out of which 23 cases were transferred from 2023 (21 appeals and 2 cases based on the execution of judgments of the Administrative Court of Montenegro) and 384 cases received during 2024 (362 appeals and 22 cases based on the execution of judgments of the Administrative Court of Montenegro).

All cases that the Commission for the Protection of Rights had in its work were related to public procurement procedures, while the Commission for the Protection of Rights did not have any appeal cases against the procedure for awarding public-private partnership contracts in the reporting period.

Cases transferred from 2023	23
Cases received in 2024	384
Total:	407

3.2. Total number on resolved and unresolved cases that the Commission for the Protection of Rights had in its work in 2024

In 2024, the Commission for the Protection of Rights had a total of 407 cases in its work, out of which 400 cases were resolved (98.28%), while 7 cases (1.72%) remained unresolved.

Case Type	In total	resolved	unresolved
Appeal cases	383	376	7
Cases based on the execution of judgments of the Administrative Court	24	24	0
Total:	407	400	7

At the end of the reporting period, i.e. on December 31, 2024, the Commission for the Protection of Rights resolved all cases within the deadlines set by law, for the reason that all appeals received by the Commission for the Protection of Rights by December 24, 2024, resolved by December 31, 2024, and on which appeals it decided within an average period of 24 days from the date of submission of complete documentation by the contracting authority. In addition, the Commission for the Protection of Rights also resolved 23 cases transferred from 2023, which it determined in its work after the appointment, and which were received in 2022 and 2023.

Namely, 7 cases (1.72%) that were received after December 24, 2024, and were not resolved by December 31, 2024, were resolved within the prescribed deadline, which means that the Commission for the Protection of Rights resolved all cases within the legally prescribed deadlines, i.e. in all cases received in 2024.

Also, it should be borne in mind that the inflow of cases in 2024 was significantly higher than the inflow of cases in 2023, by 23.47%.

4. DATA ON APPEAL CASES

4.1. Information on resolved appeals in dockets by phases of the procedure

The provisions of Article 185, paragraph 3 of the Law on Public Procurement prescribes that an appeal may be filed against: tender documentation, changes and/or additions to the tender documentation, decision on exclusion from the public procurement procedure, decision on the selection of the most favorable bid and decision on annulment of the public procurement procedure. Also, Article 186, paragraph 1 of this Law prescribes that an appeal against the tender documentation and the changes and/or addition of the tender documentation may be filed by an economic operator no later than ten days before the date of submission of applications for qualifications or bids, and paragraph 2 of this Article prescribes that an appeal may be filed by the applicant for qualification within ten days from the date of delivery of the decision on exclusion from the public procurement procedure, and paragraph 3 of this article prescribes that an appeal filled against decision on the selection of the most favorable bid and decision on annulment of the public procurement procedure may be declared by the candidate, or the bidder, within ten days from the date of publication of the decision on the selection of the most advantageous bid, or the decision on the annulment of the public procurement procedure.

Out of the total number of resolved appeal cases (376), the Commission for Protection of Rights in the reporting period resolved: 19 appeals against the tender documentation, two appeals against the changes of the tender documentation, one appeal against the tender documentation and amendments to the tender documentation, 289 appeals against the Decision on the selection of the most favorable bid, one appeal against the Decision on the selection of the most favorable bid and the Decision on exclusion from the public procurement procedure and 64 appeals against the Decision on annulment of the public procurement procedure.

Appeals filed against:	Number of appeals
Tender Documentation	19
Tender documentation and Amendments to tender documentation	1
Amendments to the Tender Documentation	2
Decisions on the selection of the most favorable bid	289
Decisions on the selection of the most favorable bid and Decision on exclusion from the public procurement procedure	1
Decisions on annulment of the public procurement procedure	64
Total:	376

In the reporting period, appeals were filed against the actions and decisions of 92 contracting authorities, out of which one appeal was filed against the actions and decisions of 45 contracting authorities, while two or more appeals were filed against the actions and decisions of 47 contracting authorities (in relation of 33 contracting authorities, the appeal was filed two or five times, in the relation of 7 contracting authorities, appeals were filed seven to eleven times, while in relation to another seven contracting authorities appeals were filed more than fourteen times). The contracting authorities whose actions and decisions received the most appeals were: Capital Projects Administration, Clinical Center of Montenegro, Electric Power Industry of Montenegro a.d. Nikšić, Montenegrin Electricity Distribution System Podgorica, State Property Administration, Monteput d.o.o. Podgorica and the Ministry of the Interior.

4.2. Data on resolved appeal cases by type of procedure

Out of the total number of resolved appeal cases, the Commission for the Protection of Rights in the reporting period resolved: 374 appeals filed in open public procurement procedures, one appeal filed in a negotiated procedure without prior publication of a public invitation and one appeal filed in a restricted procedure.

Open procedure	374
Negotiation procedures without prior publication of a public invitation	1
Restricted procedure	1
Total:	376

4.3. Data on resolved appeals by types of public procurement cases

Out of the total number of resolved complaint cases, the Commission for the Protection of Rights in the reporting period resolved: 229 complaints were filed in public procurement procedures in which the subject of procurement is goods, 59 complaints were filed in public procurement procedures in which the subject of procurement are works and 88 complaints were filed in public procurement procedures in which the subject of procurement are services.

Goods	229
Works	59
Services	88
Total:	376

4.4. Structure of appellant

Appellant	Number of complaints
Domestic companies (LLC, AD....)	325
Foreign Companies	10
Natural person	8
Consortium/Joint Bid of Domestic Companies	13
Consortium/Joint Bid of Domestic and Foreign Companies	18
Consortium of Foreign Enterprises	2
Total:	376

4.5. Method of resolving appeal cases

overview of the decision-making process of the Commission for the Protection of Rights

Type of decision	Number of complaints
Rejected the appeal as unfounded.	94
Rejected the appeal as untimely	3
Rejected an appeal as filed by an unauthorized person.	12
Rejected an appeal as incomplete.	1
Accepted appeal	247
A partially accepted appeal.	6
The procedure was suspended due to the appellant withdrawal from the appeal	6
Due to the appeal ex officio, the public procurement procedure is annulled in its entirety	6
Due to the appeal ex officio, public procurement procedure was partially annulled	1
Total:	376

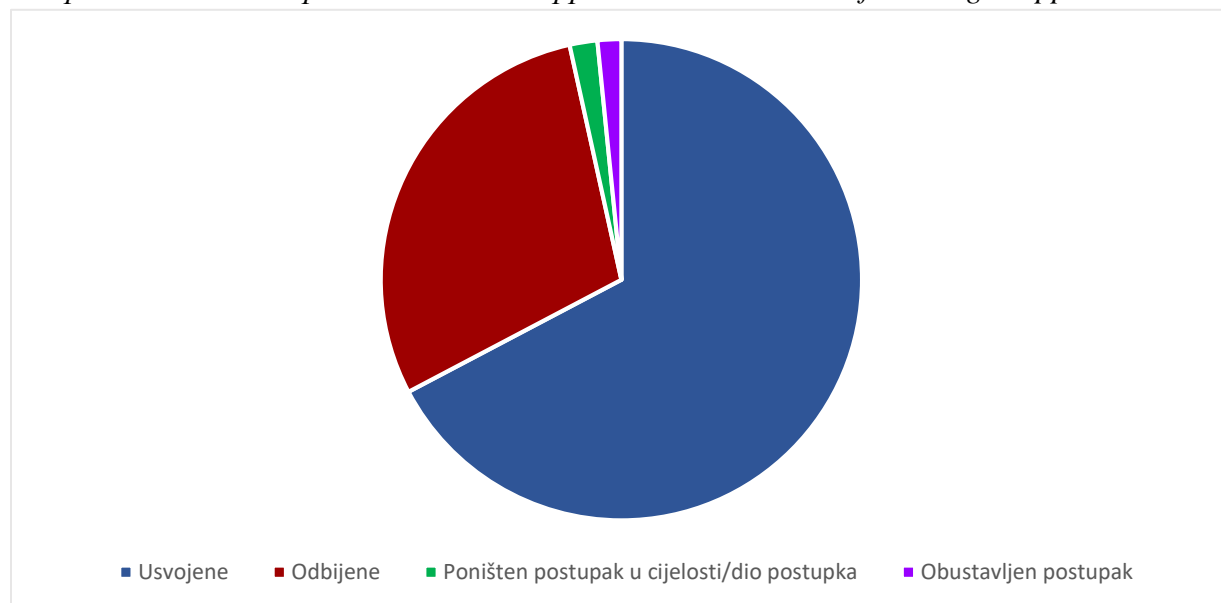
From the above table it follows that the structure of the decision on appeals is:

Accepted appeal: 253

Rejected appeal: 110

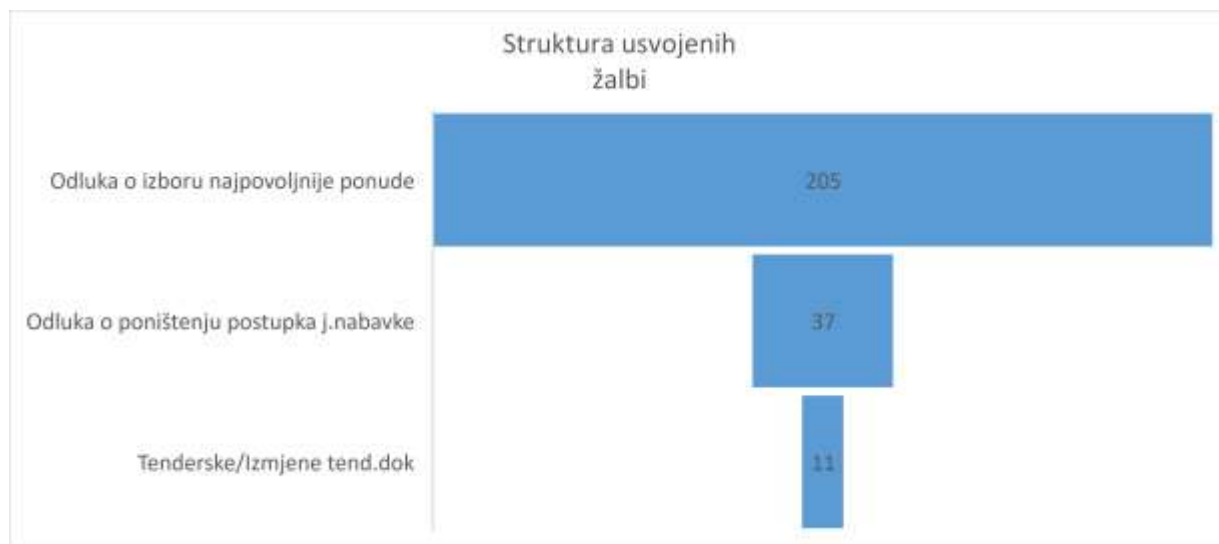
The public procurement procedure has been annulled ex officio in its entirety/part of the procedure: 7.

The procedure was suspended due to the appellant's withdrawal of the lodged appeal: 6



4.5.1. Structure of accepted appeals:

Out of 253 appeals that were accepted, 205 appeals were filed against the decision on the selection of the most favorable bid, 37 appeals were filed against the decision on the annulment of public procurement procedures, while 11 appeals were filed against the tender documentation/amendment of the tender documentation.



Namely, in relation to the total number of complaints (22) that were filed against the tender and/or the amendment of the tender documentation, 11 appeals were accepted and the tender documentation was annulled, then on the basis of two appeals, the public procurement procedure was annulled ex officio in its entirety, while eight appeals were rejected as unfounded, and one appeal was rejected as incomplete. From the above, it can be concluded that in the case of appeals filed against the tender and/or amendments to the tender documentation, there is a higher percentage of accepted appeals or annulled procedures, which indicates the omissions of the contracting authority during the preparation of the tender documentation or amendments.

4.5.2. Structure of rejected appeals:

Type of decision	Number of appeals
Rejected appeal as unfounded.	94
Rejected the appeal as untimely	3
Rejected an appeal as filed by an unauthorized person.	12
Rejected appeal as an incomplete.	1
Total:	110

Out of 110 decisions of the Commission for the Protection of Rights rejecting appeals, 77 appeals were filed against the Decision on the selection of the most favorable bid, 23 appeals were filed against the Decision on the annulment of the public procurement procedure, nine complaints were filed against the tender documentation/amendment of the tender documentation, while one complaint was filed against the Decision on the selection of the most favorable bid and the Decision on the annulment of the public procurement procedure.

4.5.3. Structure of appeals in which the proceedings have been suspended due to the withdrawal of the appellant from the submitted appeal

Out of six appeals on which the procedure was suspended due to the withdrawal of the appellant from the appeal, five appeals were filed against the Decision on the selection of the most favorable bid, and one against the Decision on the annulment of the public procurement procedure.

4.5.4. Decisions of the Commission for the Protection of Rights in which significant violations of the Law on Public Procurement were established ex officio

The provision of Article 196 of the Law on Amendments to the Law on Public Procurement ("Official Gazette of Montenegro", No. 03/23, 11/23 and 84/24) stipulates that the Commission for the Protection of Rights ex officio takes into account significant violations of the law, irrespective of the part of the public procurement procedure an appeal has been filed against, while Article 195, paragraph 1 of this Law prescribes that a significant violation of the rules of the public procurement procedure shall exist if:

- 1) the contracting authority carries out the public procurement procedure referred to in Article 59 of this Law that is not in accordance with the opinion of the Ministry, except in the case referred to in Article 59 paragraph 1 point 3 of this Law;
- 2) 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) the contracting authority continues the procedure before deciding on the appeal, which is not in accordance with Article 187 paragraph 1 of this Law;
- 4) the decision on the selection of the most advantageous bid did not decide on the submitted bids;
- 5) the contracting authority does not act in accordance with Article 95 paragraph 2 and 3 of this Law, if it has a significant impact on fulfilling the conditions for participation in the public procurement procedure, making a bid in accordance with the technical specification of the procurement subject and/or executing the public procurement contract;
- 6) in the implementation of the public procurement procedure, the representative of the contracting authority from Article 41 paragraph 2 of this Law participated, who did not sign a statement on the absence of a conflict of interest or who had to be excluded from the public procurement procedure due to a conflict of interest;
- 7) the contracting authority does not act in accordance with Article 145 paragraph 1 of this Law.

Paragraph 2 of this Article of the Law prescribes that If a significant violation of the rules of procedure referred to in paragraph 1 of this Article can subsequently be remedied, the Commission for the Protection of Rights will examine the complaints, decide on significant violations of the law that the complainant did not point out in the appeal, and cancel the action, decision or part of the procedure to which the significant violation refers, while paragraph 3 of this Law prescribes that in the event of a significant violation of the rules of procedure from paragraph 1 of this Article not remedied subsequently, and which the complainant did not point out in the appeal, the Commission for the Protection of Rights will, on the occasion of the appeal, without examining the appeal allegations, annul the public procurement procedure as a whole, i.e. the procedure for the specific party to which the complaint relates.

Deciding on the complaints filed in 2024, and in connection with public procurement procedures conducted under the Law on Amendments to the Law on Public Procurement ("Official Gazette of Montenegro", No. 03/23 and 11/23), the Commission for the Protection of Rights determined that:

- 1) in five procedures, a significant violation of the law was committed in the public procurement procedure referred to in Article 195, paragraph 1, point 2 of the Law on Public Procurement (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),
- 2) In one procedure, in the procedure of public procurement referred to in Article 195, paragraph 1, items 3 and 7. A significant violation of the law has been committed (Item 3 – the contracting authority continued the procedure before the decision on the appeal was issued, which is contrary to Article 187, paragraph 1 of this Law. Item 7 – the contracting authority failed to act in accordance with Article 145, paragraph 1 of this Law)
- 3) In one of the proceedings, a significant violation of the law was committed in the public procurement procedure referred to in Article 195, paragraph 1, point 3 (the contracting authority continued the procedure before the decision on the appeal was issued, which is contrary to Article 187, paragraph 1 of this Law).

The contracting authorities whose public procurement procedure was annulled ex officio are Electric Power Industry of Montenegro a.d. Nikšić, Traffic Administration, "Funeral Services" LLC Budva, Parking Service LLC Žabljak and Public Health Institution Special Hospital Vaso Ćuković Risan.

4.6. Decision- making time on appeals

The provisions of Article 193 of the Law on Public Procurement, stipulates that the Commission for the Protection of Rights is obliged to decide on the appeal within 30 days from the date of delivery of the appeal the complete case file, while paragraph 2 of this Article prescribes that this deadline may be extended by a maximum of ten days if it is necessary to hire an expert, obtain opinion of the competent authorities and due to the volume of documentation in the public procurement procedure, which the complainant and the contracting authority have been informed.

In 2024, the Commission for the Protection of Rights resolved 376 appeals, out of which 24 appeals in procedures initiated and conducted under the Law on Public Procurement ("Official Gazette of Montenegro", No. 74/19), and 352 complaints in procedures initiated and conducted under the Law on Amendments to the Law on Public Procurement ("Official Gazette of Montenegro", No. 03/23 and 11/23).

Namely, since the appointment of the President and members of the Commission by the Parliament of Montenegro, the Commission for the Protection of Rights has paid special attention to the deadline for resolving complaints in the filed in public procurement procedures, especially due to the importance that the initiated procedures have on the entire economic development of the country, without losing the quality of the decisions made, which is extremely important for continued trust in the entire public procurement system.

In 2024, the Commission for the Protection of Rights **decided on resolved complaints within an average period of 24 days from the date of submission of complete documentation by the contracting authorities**, which represents a remarkable progress in its work, especially considering that the Commission for the Protection of Rights in 2023 made decisions in an average period of 41 days.

4.7. The most common grounds for lodging an appeal

In complaints filed in public procurement procedures, the most common reasons for the illegality of actions and decisions of the contracting authority are:

- imprecise and unclear tender documentation, which prevents the submission of appropriate and mutually comparable bids, especially in the part of the technical specifications of the procurement subject;
- drawing up technical specifications of procurement items contrary to the principle of ensuring competition from Article 8 of the Law on Public Procurement and the principle of equality, freedom and prohibition of discrimination from Article 10 of the Law on Public Procurement;
- determining the conditions for participation in the public procurement procedure and requirements regarding the execution of the procurement subject, contrary to the valid provisions of the law, especially in the part of the professional and technical ability requirements, and evidence of the fulfillment of the quality conditions of the procurement subject;
- inadequate definition of criteria and methodology for evaluation of bids;
- violations of the procedures for opening bids and drawing up minutes on the opening of bids and publication of the same on ESPP;
- irregularities and violations of the procedure of review, assessment and evaluation of bids;
- inadequate, incomplete and factually unfounded legal explanation of the decision on the selection of the most favorable bid, decisions on annulment of the public procurement procedure and decisions on exclusion from the public procurement procedure, regarding the lack/existence of reasons for the correctness of the bid and/or regarding the lack/existence of grounds for exclusion from the public procurement procedure;
- misunderstanding of the reasons for exclusion from the public procurement procedure and the

reasons for the invalidity of the bid and

- Preventing access to the complete case files of the public procurement procedure, or files that are submitted directly.

4.8. The most common irregularities identified by the Commission for the Protection of Rights

The most common irregularities found by the Commission for the Protection of Rights, which were committed by the contracting authority, are:

- drawing up technical specifications of the subject of procurement in a way that unjustifiably restricts market competition;
- describing the subject of procurement, that is, creating technical specifications in such a way that priority is given to a certain business entity;
- breach of obligations regarding the clarification of the tender documentation and amendments to the tender documentation;
- incorrect application of the provisions on review, assessment and evaluation of bids;
- deviation from the conditions and requirements from the tender documentation during the review and evaluation of bids;
- omissions when determining the absence/existence of grounds for exclusion from the public procurement procedure and/or reasons for the correctness of the bid;
- failure to decide on all submitted bids, but only on a specific one, possibly the most favorable bid.

The Commission for the Protection of Rights believes that adequate planning and appropriate application of public procurement procedures would certainly reduce the need for frequent changes and additions to tender documentation, and thus reduce the number of potential appeals that stop the procedures, which additionally affects the shortening of the total time required for the implementation of the public procurement procedure.

5. CASES BASED ON THE EXECUTION OF JUDGMENTS OF THE ADMINISTRATIVE COURT OF MONTENEGRO

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

In the reporting period, the Commission for the Protection of Rights received from the Administrative Court of Montenegro 39 judgments and three decisions, rendered in the procedure on lawsuits filed against the decision of the Commission for the Protection of Rights, of which:

- 22 judgments by which lawsuits were adopted and cases returned to the Commission for the Protection of Rights for reconsideration;
- 17 judgments rejecting lawsuits, and

- There are three decisions suspend the proceedings due to the appellants withdrawal from the appeal.

Out of the 22 judgments by which the lawsuits were adopted and cases were returned to the Commission for the Protection of Rights to reconsideration:

- 1 judgment referred to the decision of the Commission for the Protection of Rights from 2024.
- 1 judgment referred to the decision of the Commission for the Protection of Rights from 2023,
- 7 judgments referred to the decisions of the Commission for the Protection of Rights issued in 2022 and
- 13 judgments referred to the decisions of the Commission for the Protection of Rights from 2021.

Out of the 17 judgments rejecting the lawsuits:

- 3 judgments referred to the decisions of the Commission for the Protection of Rights from 2023,
- 5 judgments referred to the decisions of the Commission for the Protection of Rights from 2022 and
- 9 judgments referred to the decisions of the Commission for the Protection of Rights from 2021.

Two decisions suspending the proceedings due to the appellant withdrawal from the appeal, referred to the silence of the administration, and one to the decision of the Commission for the Protection of Rights made in 2023.

5.1. Overview of the decisions of the Commission for the Protection of Rights issued in the procedure for the enforcement of judgments of the Administrative Court of Montenegro

In the reporting period, the Commission for the Protection of Rights had 24 cases in its work based on the execution of judgments of the Administrative Court of Montenegro, which it resolved.

Type of decision	Number of decisions
Rejected appeal as unfounded	5
Rejected appeal as untimely	1
Due to the appeal ex officio, the public procurement procedure is annulled in its entirety	7
Due to the appeal ex officio, the public procurement procedure was annulled partially	2
Accepted appeal	6

Partially accepted appeal.	3
Total	24

In the enforcement proceedings of the judgments of the Administrative Court of Montenegro, the Commission for the Protection of Rights adopted nine decisions by which, upon appeal ex officio, it annulled the public procurement procedure: in one case due to a significant violation of the law in the public procurement procedure under Article 195 paragraph 1 point 6 of the Law on Public Procurement ("Official Gazette of Montenegro", No. 74/19, 3/23 and 11/23), one case due to significant violation of the PPL under Article 195 paragraph 1 point 5 ("Official Gazette of Montenegro", No. 74/19), pursuant to Article 134, paragraph 1, point 3 of the Law on Public Procurement ("Official Gazette of Montenegro", No. 74/19), a significant violation of the public procurement of the PPL was committed in six proceedings ("Official Gazette of Montenegro", No 42/11, 57/14, 28/15 and 42/17) a significant violation was committed in one case Article 134, point 2 of the Law on Public Procurement ("Official Gazette of Montenegro", No. 42/11),

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

Pursuant to Article 40 of the Law on Administrative Disputes, it is prescribed that against the final decisions of the Administrative Court of Montenegro, including the judgments of that Court rendered in proceedings on lawsuits against the decisions of the Commission for the Protection of Rights, a request for review of the court decision and a request for reopening of the proceedings may be submitted to the Supreme Court of Montenegro.

In the reporting period, the Commission for the Protection of Rights received 4 judgments and one decision of the Supreme Court of Montenegro, issued following a request for review of the judgment of the Administrative Court of Montenegro, by which the Supreme Court of Montenegro rejected 3 requests for review of a court decision as unfounded, while one request was accepted and one decision was issued rejecting the request for revision of a court decision as inadmissible.

7. LAWSUITS FOR INITIATING ADMINISTRATIVE PROCEEDINGS AGAINST DECISIONS OF THE COMMISSION FOR THE PROTECTION OF RIGHTS

In the reporting period, the Administrative Court of Montenegro submitted 70 lawsuits with the Commission for the Protection of Rights, out of which one lawsuit was filed against the Commission's decision adopted in 2022, seven lawsuits were filed against the Commission's decisions adopted in 2023, while 62 lawsuits were filed against the Commission's decisions adopted in 2024.

Namely, in relation to the total number of decisions issued by the Commission for the Protection of Rights in 2024 (400 decisions), 62 lawsuits were filed with the Administrative Court of Montenegro, which amounts to 15%.

8. PROCEDURES FOR COMPENSATION FOR DAMAGES DUE TO DECISIONS OF THE COMMISSION FOR THE PROTECTION OF RIGHTS

Article 197, paragraph 4 of the Law on Public Procurement stipulates that any person who has suffered damage due to a violation of this Law has the right to file a lawsuit for damages before the competent court in accordance with the law.

In 2024, no lawsuit for damages was filed against the State of Montenegro and the Commission for the Protection of Rights before the regular courts of Montenegro.

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

The provision of Article 192, paragraph 3 of the Law on Public Procurement prescribes that the contracting authority is obliged to act upon the decision of the Commission for the Protection of Rights, within 15 days from the date of publication of the decision, or the delivery of the decision, and to inform about it the Commission within the prescribed period, and paragraph 4 of the same Article of this Law prescribes that if the contracting authority does not act in accordance with paragraph 3 of this Article, The Commission for the Protection of Rights shall inform the Ministry and the Public Procurement Inspectorate.

During the reporting period, in accordance with the provisions of Article 192, paragraph 4 of the PPL, in all cases in which the contracting authorities did not act in accordance with the aforementioned legal provision, informed the Public Procurement Inspection and the competent Ministry.

In addition, the Commission for the Protection of Rights has published on its website the Instruction for Contracting Authorities: "We inform contracting authorities by post office or e-mail (komisija@nabavka.gov.me) that it has acted upon the decision of the Commission for the Protection of Rights in Public Procurement Procedures, in accordance with Article 192, paragraph 3 of the Rules of Procedure of the Law on Public Procurement. If you do not comply to act in accordance with Article 192, paragraph 3 of the Public Procurement Law, the Commission for the Protection of Rights shall notify the Ministry and the Public Procurement Inspector, after which contracting authorities began to submit notifications on their actions more regularly.

10. HARMONIZATION OF PROCEDURES AND PRACTICES OF THE COMMISSION FOR THE PROTECTION OF RIGHTS

In order to take preventive measures of the Commission for the Protection of Rights in preventing irregularities in future public procurement procedures, the Commission for the Protection of Rights began to publish on its website, during the reporting period, the practice and positions of this Commission, which have been recognized in a large number of submitted appeals.

By publishing and making these positions easily accessible, the Commission for the Protection of Rights will further enhance legal certainty and strengthen the confidence of all

participants in public procurement procedures in the efficiency of the procurement system. At the same time, it will enable new participants in procurement procedures—primarily bidders—to become acquainted in advance with the Commission’s positions on certain issues relevant to their participation in procurement procedures, allowing them to act in a timely manner, to submit their bids properly, and, if necessary, to lodge appeals. In this way, a faster harmonization of legal practice will be ensured, which is a key element of legal certainty in every legal system.

Namely, by adopting and publicly publishing its positions and practice, the Commission for the Protection of Rights ensures consistency in its actions and decision-making. Below are the positions adopted during the reporting period:

Declaration of absence of conflict of interest

In all cases in which there is no handwritten declaration of the absence of a conflict of interest, the Commission for the Protection of Rights in Public Procurement Procedures shall, ex officio, in accordance with Article 195, paragraph 3 in conjunction with paragraph 1, point 6 of the Law on Public Procurement, annul the public procurement procedure in its entirety.

Link: Decision of the Commission for the Protection of Rights No. UP.0903-33/2024 of 29.03.2024.

-Statement of the business entity - Instruction for filling in the statement - Article 108, point 5 of the Law on Public Procurement

That the statement of the business entity in the chapter "Information on the business entity", under item C1, in accordance with the Instruction for filling in the statement, is filled in only by the subcontractor who provides the answer to the question "Is the business entity a subcontractor in the public procurement procedure", and that the statement of the business entity of the bidder will be incorrectly made if it declares itself in the said part, which will be the basis for mandatory exclusion from the public procurement procedure on the basis of Article 108, point 5 of the Law on Public Procurement.

It is important to point out that the Commission for the Protection of Rights (new convocation appointed by the Parliament of Montenegro), in accordance with the provision of Article 5, paragraph 3 the Law on Administrative Procedure ("Official Gazette of Montenegro", No. 56/14, 20/15, 40/16 and 37/17), changed the previously adopted position on the same issue, presented in Decision No. UP. 0907-193/2023 from October 19, 2023. Namely, the interpretation of the Instruction for Filling in the Statement, which is an integral part of the Rulebook on the Form of the Declaration of a Business Operator ("Official Gazette of Montenegro", No. 55/23 and 83/23), which prescribes that part C1 is to be filled in only by a subcontractor, the Commission for the Protection of the Right of Opinion to deviate from the previous paragraph on the same issue so that all bidders in the public procurement procedure can deviate, have been treated equally and equally, in terms of the correctness of the statement of the economic operator, and in relation to

the existence of grounds for mandatory exclusion from the public procurement procedure in accordance with Article 108, point 5 of the Law on Public Procurement. In taking this position, the Commission for the Protection of Rights had in mind the meaning of the provision of Article 111, paragraph 2 of the PPL, which provides for The applicant for qualification, i.e. the bidder, is obliged to provide complete, clear and accurate information in the statement of the economic operator, as well as the Instructions for filling in the statement, which, among other things, prescribes that the statement of the economic operator should contain the information and data required by the tender documentation and should be properly drafted.

Link: Decision of the Commission for the Protection of Rights n. UP. 0905-54/2024 from April 04,2024.

-Statement of the business entity - Instruction for filling in the statement - Article 108, point 5 of the Law on Public Procurement

That the bidders are obliged to fill in the statement of the business operator in accordance with the Instructions for filling in the statement and the required conditions from the tender documentation, and that, if they provide and fill in the information that is not prescribed by the Tender documentation, it will be considered that their statement of the business operator is incorrectly drafted.

It is important to point out that the Commission for the Protection of Rights (new convocation appointed by the Parliament of Montenegro), in accordance with the provision of Article 5, paragraph 3 of the Law on Administrative Procedure (Official Gazette of Montenegro, No. 56/14, 20/15, 40/16 and 37/17), changed the previously adopted position on the same issue, expressed in earlier decisions of the Commission. Namely, the interpretation of the Instruction for filling in the Statement, which is an integral part of the Rulebook on the Form of the Declaration of a Business Entity ("Official Gazette of the Republic of Serbia", No. 55/23 and 83/23), in which it is prescribed in Part VI Conditions of Capacity of an Economic Entity that if the Contracting Authority in the tender documentation in question did not require the fulfilment of the conditions of the capacity of the economic operator from Part VI (A, B, C), or any of the conditions of the capacity of the economic operator, This part or part that does not require, i.e. the Commission for the Protection of Right of Opinion, to deviate from the previous paragraph on the same issue in order for all bidders in the public procurement procedure to have equal treatment in relation to the existence of grounds for mandatory exclusion from the public procurement procedure on the basis of Article 108,point 5 of the Law on Public Procurement. In taking this position, the Commission for the Protection of Rights had in mind the meaning of the provision of Article 111, paragraph 2 of the Law on Public Procurement, which prescribes that the applicant for qualification, i.e. the bidder, is obliged to provide complete, clear and accurate information in the statement of the business entity, as well as the Instruction for filling in the statement, which, among other things, prescribes that the statement of the business entity should contain the information and data required by the tender documentation and that it should be properly drafted.

-Statement of the business entity - Instruction for filling in the statement - Article 108, point 5 of the Law on Public Procurement

Therefore, it clearly and unambiguously follows from the above facts that the statements of the business entity of the bidder "G.P.C." d.o.o. P. and the bidder "G." a.d. P. are not made in accordance with the Instruction for filling in the statement, which is an integral part of the Rulebook on the Form of Declaration of a Business Entity ("Official Gazette of Montenegro", No. 55/23 and 83/23), because they do not contain the required information regarding the stated conditions for performing the activity. Namely, the given Instructions for filling in the statement, the obligation of application referred to in points 5 and 12 of the tender documentation, it is prescribed that the statement of the economic operator referred to in Part VI (Conditions of the capacity of the economic operator) under point A (Ability to perform the activity), is drawn up in such a way that if the question is asked: "Does the economic operator have the authorization (permit, license, authorisation or other act) to perform the activity that is the subject of procurement in accordance with the law?", the answer "Yes", the business entity, among other things, provides information on what is proven by this evidence. However, as the bidder "G.P.C." d.o.o. P. and the bidder "G." a.d. in this part of their statements of the business operator did not state what was proved by the said evidence, and what they were obliged to do in accordance with the Instructions for filling in the statement, from the above it indisputably follows that their statements of the business operator, in the said part, were not fully and properly drafted, which is the basis for the mandatory exclusion of these bidders from the public procurement procedure on the basis of Article 108, point 5 of the Law on Public Procurement. This is all the more so because the statement of the economic operator is crucial evidence for proving the fulfilment of the conditions for participation in the public procurement procedure prescribed by the tender documentation and in accordance with the provision of Article 120, paragraph 17, point 3 of the PPL, after the expiry of the deadline for the submission of bids, the Law on Public Procurement may not be amended and/or supplemented.

Link: Decision of the Commission for the Protection of Rights n. UP. 0906-35/2024 from March 15,2024.

-Statement of the business entity - Instruction for filling in the statement - Article 108, point 5 of the Law on Public Procurement

Statement of the business operator in which the bidder, in Part VI "Conditions of Capacity of the Economic Operator", point A: "Capacity to perform the activity", states incorrect information about the issuer of evidence, i.e. contrary to the Decree on the Organization and Manner of Work of the State Administration, which was in force at the time of submission of bids, will be considered incorrectly drafted and will constitute the basis for mandatory exclusion of bidders from the public procurement procedure within the meaning of Article 108, point 5 of the Law on Public Procurement.

Link: Decision of the Commission for the Protection of Rights No. UP. 0903-25/2024 of March 22,2024.

-Data protection – Article 30 Law on Public Procurement – Article 133 of the Law on Public Procurement

Therefore, it follows from the above facts that the appellant, when inspecting the electronic documentation available at the ESPP, could not see any document that the bidder Joint Bid "B.O." d.o.o. P. and "M.S." d.o.o. B. submitted with their bid, which is indisputably established from the Minutes No. 60-00-2283 of January 25,2024 on access to the documentation of the public procurement procedure. Also, from the response of the Ministry of Finance – Directorate for Public Procurement Policy dated March 04,2024, it is indisputable that all documents of the bidders Joint Bid "B.O." d.o.o. P. and "M.S." d.o.o. B. in the procedure in question are marked as secret. Bearing in mind the established facts, and proceeding from the aforementioned legal provisions, as well as the provisions of Article 30, paragraph of the Law on Public Procurement, which prescribes that a business entity may not mark as secret information relating to the offered price, catalogs, the financial part of the bid, data evaluated according to the criterion for the selection of the most favorable bid, public documents and evidence of the fulfillment of conditions in the public procurement procedure, The Commission for the Protection of Rights determines that the bid of the bidder, the Joint Bid of "B.O." d.o.o. P. and "M.S." d.o.o. B., is defective pursuant to Article 133, point 1 of the PPL , which stipulates that an invalid bid that has not been submitted in the manner determined by the tender documentation is in accordance with this Law.

Link: Decision of the Commission for the Protection of Rights No. UP. 0906-31/2024 of March 22,2024.

-Language in the Public Procurement Procedure Article 5, Paragraph 4 of the Law on Public Procurement

A bidder who, in the financial part of the bid, states words in English or in another language which, as the language of the bid, is not prescribed by the tender documentation, shall be considered non-compliant on the basis of Article 133, paragraph 1, item 1 of the Law on Public Procurement

Link: Decision of the Commission for the Protection of Rights No. UP. 0903-25/2024 of March 22,2024.

11. EXCERPT FROM THE EUROPEAN COMMISSION'S 2024 PROGRESS REPORT ON MONTENEGRO - CHAPTER 5

Efficient System of Legal Remedies

Appeal procedures are in line with EU standards and practice. At the end of 2023, a new President and members of the Commission for the Protection of Rights in Public Procurement Procedures were appointed, thereby resolving the issue of insufficient staffing. There are no significant delays in handling and resolving complaints, and the system of legal remedies functions effectively.

SUMMARY

Based on the above-mentioned data, it may be concluded that in 2024 the Commission achieved results which confirm its high level of efficiency, the quality of its decision-making, and its commitment to lawful and timely action in the protection of rights in the field of public procurement. Thus, during the reporting period

- The commission was appointed in full composition in April 2024, but later in August one member was appointed to another position.
- The procedure was initiated for the publication of a public call for the appointment of one member of the Commission for the Protection of Rights,
- The Commission actively worked on strengthening its Legal Department, and a new Rulebook on Internal Organization and Systematization was adopted
- Public announcements were published for the filling of six positions within its Legal Department
- The inflow of cases in 2024 increased by 23.47% compared to 2023
- 400 cases or 98.28% were resolved, while 7 cases remained unsolved or 1.72%,
- The Commission for the Protection of Rights also resolved 23 cases transferred from 2023, which it identified in the work at the time of appointment, and which were received in 2022 and 2023,
- It reduced the average decision-making time to 24 days, compared to 41 days in 2023,
- 15% of the Commission's decisions were the subject of a lawsuit before the Administrative Court of Montenegro,
- The Administrative Court of Montenegro has submitted 39 judgments to the Commission, out of which they relate to decisions issued in the following years: one from 2024, four from 2023, 12 from 2022 and 22 from 2021.
- It secured additional funds for gross salaries and employer contributions, as well as for other necessary resources required for work and functioning, in the amount of €145,000, bringing the total budget in the amount of €507,988.62 for 2024,
- On the basis of the fee for conducting the appeal procedure € 1,385,279.29 were paid,
- The amount of EUR 158,141.03 has been paid into the budget of Montenegro,
- All Commission decisions are published on the EPPS and the official website, which can also be searched on various grounds.
- An initiative has been launched to develop an electronic platform for case management,
- The lack of technical equipment was identified as a key obstacle to greater efficiency and case tracking, and adequate computer equipment was purchased.
- In cooperation with the State Property Administration, it carried out the necessary procurement of equipment for video surveillance and access control of premises,

- With the aim of contributing to waste recycling and environmental protection, it initiated the practice of disposing all paper waste generated in its daily work—after proper destruction—into a designated container to be transported to a recycling center
- The Commission began publishing its practice and positions, which had been recognized in a larger number of submitted appeals
- In cooperation with the Ministry of Finance – Directorate for Public Investment Management and Public Procurement Policy, it initiated an amendment to the Rulebook on the Form of the Statement of the Economic Operator,
- A contribution was made through participation in the Working Group for the preparation and conduct of Montenegro’s accession negotiations with the European Union in the field of the EU acquis related to Negotiating Chapter 5 – Public Procurement, as well as in the Working Group for monitoring the implementation of the Public Financial Management Reform Program for the period 2022–2026
- In its 2024 Progress Report in this area, the European Commission assessed that progress had been made regarding the protection of rights in public procurement procedures and that the system of legal remedies functions effectively, which, together with other reform processes in this field, created the conditions for this chapter to be closed in June 2025.

In the coming period, the Commission will devote particular attention to the following objectives: continuing with the efficient resolution of appeal cases, strengthening administrative capacities, developing and implementing the Commission’s electronic case management platform, and providing professional training for employees — all with the aim of further strengthening the Commission as a key institution in the public procurement system.

Number: 09-426/25-706/1

Podgorica: June 26, 2025. godine