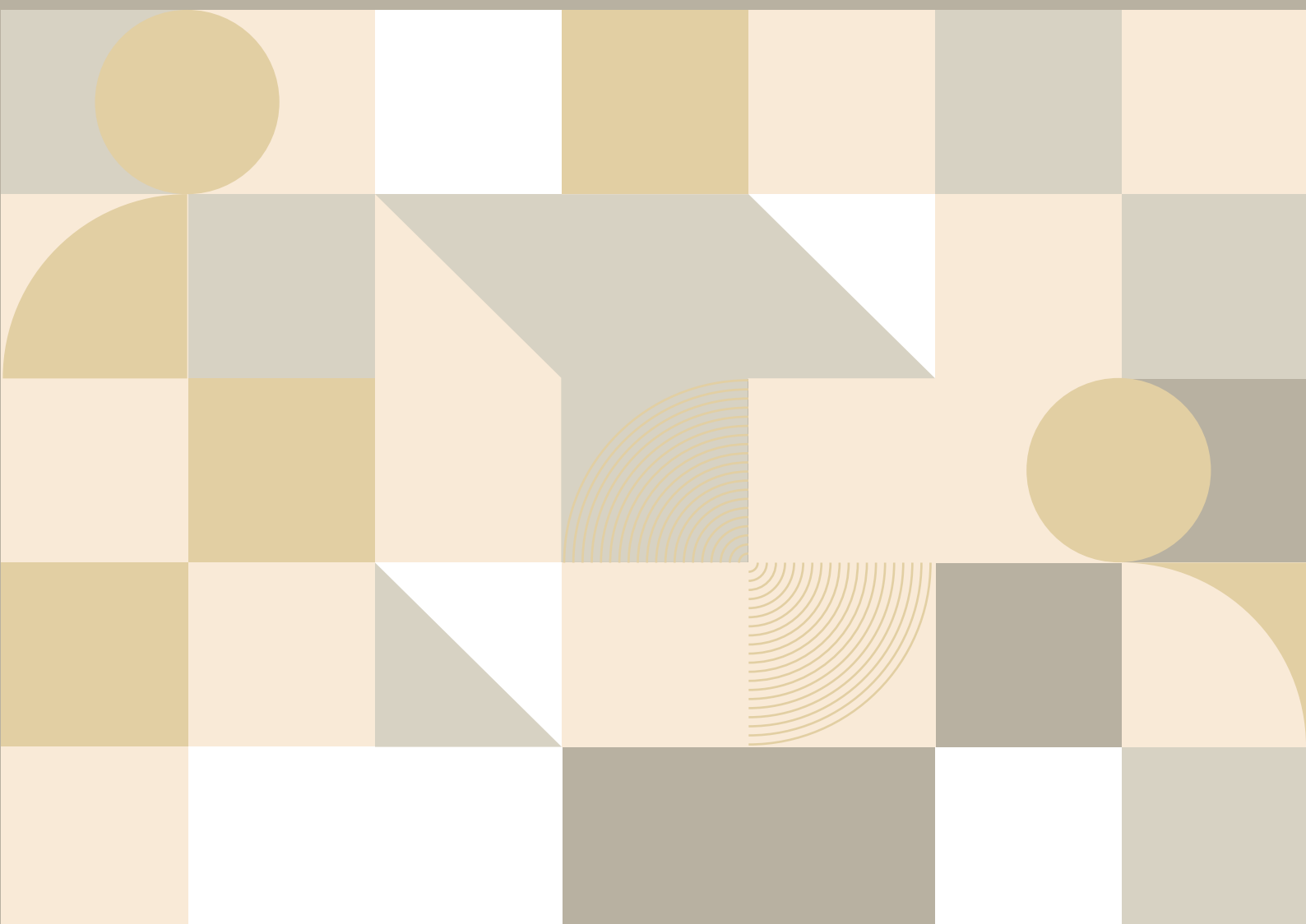


# An analysis of the decisions of the State Commission for Prevention of Corruption when acting on the cases related to public procurement in the second half of 2020

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# Impressum

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## Key findings

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- In the second half of 2020, the State Commission for Prevention of Corruption has made 263 decisions out of which 12, or 4.6% were public procurement-related.
- 75% of the procedures under review were stopped by the SCPC, while in the other cases the reports were rejected.
- Only one of the decisions that were published relates to a public procurement case that the SCPC has launched on its own initiative.
- It took an average of 489 days, or one year, 4 months and 4 days from the initiation of the procedures under review until they were completed.

## Subject of analysis

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The subject of analysis are the decisions that the State Commission for Prevention of Corruption has made when acting within its competence on the cases related to public procurement in the second half of 2020. Public procurement is professed to be one of the priority horizontal areas in the fight against corruption and conflict of interest. In line with the data available in the reports of the Public Procurement Bureau and the publicly available data in the Electronic Public Procurement System, over 2.2 billion euros, i.e. virtually 24 percent of the state budget, was spent on public procurement in the last three years.

## Competences of the State Commission for Prevention of Corruption in terms of public procurement

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The competences of the State Commission for Prevention of Corruption are prescribed in Article 17 of the Law on Prevention of Corruption and Conflict of Interest (Official Journal of the Republic of North Macedonia no. 12/2019), and among the first is the adoption of the National Strategy for the Prevention of Corruption and Conflict of Interest, coupled with an action plan for its implementation.

In the draft National Strategy for the Prevention of Corruption and Conflict of Interest 2020-2024, which has not yet been adopted by the Assembly of the Republic of North Macedonia, apart from employment, one of the priority horizontal areas in the fight against corruption and conflict of interest is public procurement. Since all the priority areas were selected on the basis of their significance, scope, corruption potential and its influence on society, public procurement is by all means one of the areas which are the most susceptible to corruption and has a major influence on society. The fact that the public procurement procedures are implemented by all institutions in the system, both centrally and locally, demonstrates how important public procurement is as an area susceptible to corruption, and thus has a negative impact on the society as a whole.

According to the publicly available data of the Electronic Public Procurement System, 32,205 contracts with a total value exceeding 56 billion denars, or more than 911 million euros, which is 24.5% of the budget, were concluded only in 2019.

According to the reports of the Public Procurement Bureau, a total of 30,291 contracts with a total value in excess of 46 billion denars, or virtually 755 million euros, which is 23.8 percent of the state budget, were concluded in 2018, while 27,031 contracts with a value of more than 38 billion euros, or 621 million euros, which is 20.3 percent of the budget, were concluded a year earlier.

Article 17 of the Law on Prevention of Corruption and Conflict of Interest stipulates the competences of the Commission, which, apart from adopting the national strategy, is also in charge of examining laws, bylaws and other general acts for corruptive practices; acting upon reports from physical and legal entities for suspicion of corruption and conflict of interest; initiating procedures for determining the responsibility of officials; launching initiatives for pressing criminal charges in the cases it is acting on; monitoring whether the financing of political parties and election campaigns are carried out in line with the law; launching initiatives on the basis of the reports of the State Audit Office; monitoring the property status and conflict of interest; cooperating with other state bodies; drafting corruption risk analysis; keeping registries etc.

Apart from the competences outlined in Article 17 there are also two articles in this Law that are specifically related to the competences of the Commission in regards to the public procurement procedures.

In line with Article 38, that refers to giving privilege or discriminating in public procurement and other contracts, the SCPC may review the public procurement documents for contracts related to making profit concluded between two state bodies, local self-government bodies, public enterprises and other legal entities that manage state capital with domestic or foreign legal entities, as well as all permits, concessions and other decisions which are used to either grant legally defined rights or benefits to legal entities or revoke or limit such rights or benefits. Furthermore, Article 38 foresees that if the SCPC finds that in the public procurement contracts and the other contracts certain parties

were privileged or discriminated against, it shall immediately ask the authorities to take measures and activities within their competence.

Article 57 of the Law prescribes that any influence on the public procurement procedure shall be banned and foresees that an official may not illegally influence a public procurement procedure. In line with the Law, this provision shall be applied even when a decision is being made for awarding approval, concessions, contingents or permits for conducting any economic or other type of for-profit activity on the basis of a public bid, advertisement or auction.



## Decisions of the State Commission for Prevention of Corruption when acting on the cases related to public procurement in the first half of 2020

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In line with Article 22, paragraph 7 of the Law on Prevention of Corruption and Conflict of Interest, the SCPC publishes its decisions on its website within five days of their adoption.

The subject of this analysis are the decisions published by the State Commission in the second half of 2020. In this period, a total of 263 decisions have been published, only 12 of which, or 4.6%, were made on account of corruption or conflict of interest cases in the public procurement procedures.

In nine of the procedures, or 75%, the SCPC has stopped the procedure after the report, while in the remaining three procedures (25%) the report was rejected. In the period under review, the SCPC did not press criminal charges in response to reports related to the implementation of public procurements.

The procedures started on the basis of the decisions were stopped as the Commission had no grounds to continue acting on the cases; in eight cases, the allegations in the reports were unconfirmed, and

in one it did not take action as other competent authorities acted on the case.

One of the reports was rejected because of insufficient grounds for initiating a procedure for establishing whether there is conflict of interest in line with Article 76, paragraph 1 of the Law on Prevention of Corruption and Conflict of Interest. In regards to the second report that was rejected, such a decision was made as there were insufficient grounds for further action of the Commission; rather than specific allegations for doubt of irregularities and illegal action taken by officials of state institutions, which would include allegations for doubt of potential malfeasance, public authority, abuse of official duty or position by an official to advance their personal interest, the report pointed to situations, illustrated by specific examples, in which the Law on Public Procurement was rigged. The reason for rejecting the third report was that there were no grounds for the Commission to act within its competence.

Out of the public procurement-related procedures under review on which the SCPC acted in the period

under review, seven (58.3%) were launched on the initiative of a known applicant, four (33.3%) on the initiative of an unknown applicant, while just one (8.3%) was launched by the initiative of the Commission, with an anonymous tip, and it was related to allegations and data published in the media.

The average time it took the SCPC to make a decision in these cases was 489 days, or one year, 4 months and 4 days. Out of all the decisions that were under review, the quickest one was made in 326 days (10 months and 21 day), while the slowest was made after an amazing 895 days, that is 2 years, 5 months and 14 days from the day the procedure was initiated.

## Conclusions

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- Despite the fact that public procurement is asserted to be one of the priority horizontal areas in the fight against corruption and conflict of interest, and an area that is the most susceptible to corruption, on the basis of the publicly available data on the website of the SCPC it can be concluded that only a handful of the reports, or 4.6%, are related to public procurements. In addition, merely 8.3% of the procedures were launched on the initiative of the SCPC.

- In line with of the Law on Prevention of Corruption and Conflict of Interest, the Commission shall make the decisions about the cases it has launched a procedure for and for which it is competent within 60 days of the date the procedure was initiated on, unless this law stipulates otherwise. From the data that was published, it can be concluded that

the average time for a decision on the cases that were under review was a mind-boggling 489 days.

- It is necessary for the SCPC to be more seriously involved in initiating public procurement corruption cases. Namely, according to the most recent survey of the companies taking part in public procurement, carried out by the Center for Civil Communications in February 2020, an astonishing 48% of the companies that were surveyed believe that there is corruption in public procurement. Of those companies, 44% believe that corruption is frequently part of public procurement, while 4% believe this is always the case. When they were asked to specify the type of corruption that is the most prevalent in an open-ended question, the majority of the companies that answered opted for political connections (24%), followed by a classic bribe (21%), while the other 55% believe that all types were represented.

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<sup>1</sup> Report on the monitoring of public procurement no. 33 (July-December 2019), Center for Civil Communications, May 2020

