

Protection of Rights in the Public Procurement Procedures in Montenegro

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RELEVANT ACQUIS

(partially aligned)

- Council Directive 92/13/EEC of 25 February 1992 coordinating the laws, regulations and administrative provisions relating to the application of Community rules on the procurement procedures of entities operating in the water, energy, transport and telecommunications sectors, (*OJ L 076 23.03.1992 p. 14*) [html](#), Amended by 11994N, Amended by 12003T;
- Council Directive 89/665/EEC of 21 December 1989 on the coordination of the laws, regulations and administrative provisions relating to the application of review procedures to the award of public supply and public works contracts,, (*OJ L 395 30.12.1989 p. 33*) [html](#), Amended by [31992L0050](#) (OJ L 209 24.07.1992 p. 1), Incorporated by [21994A0103\(66\)](#) (OJ L 001 03.01.1994 p. 461);
- Council Directive 92/50/EEC of 18 June 1992 relating to the coordination of procedures for the award of public service contracts, Article 41, (*OJ L 209 24.07.1992 p. 1*) [html](#), Amended by [31993L0036](#) (OJ L 199 09.08.1993 p. 1), Amended by 11994N, Amended by [31997L0052](#) (OJ L 328 28.11.1997 p. 1), Amended by [32001L0078](#) ([OJ L 285 29.10.2001 p. 1](#)), Amended by 12003T, See [32004L0018](#) ([OJ L 134 30.04.2004 p. 114](#)) ;
- Directive 2007/66/EC of the European Parliament and of the Council of 11 December 2007 amending Council Directives 89/665/EEC and 92/13/EEC with regard to improving the effectiveness of review procedures concerning the award of public contracts (Text with EEA relevance) OJ L 335, 20.12.2007, p. 31–46.



LEGAL FRAMEWORK

- Law on Public Procurement (“Official Gazette of Montenegro” no 42/11);
- Law on General Administrative Procedure (“Official Gazette of the Republic of Montenegro” no 60/03, “Official Gazette of Montenegro” no 32/11);
- Law on Administrative Disputes (“Official Gazette of the Republic of Montenegro” no 60/03, “Official Gazette of Montenegro” no 32/11).



GENERAL OVERVIEW

- 1. Legal Basis and Institutional Framework**
- 2. Pre – contractual protection**
- 3. Post – contractual protection**



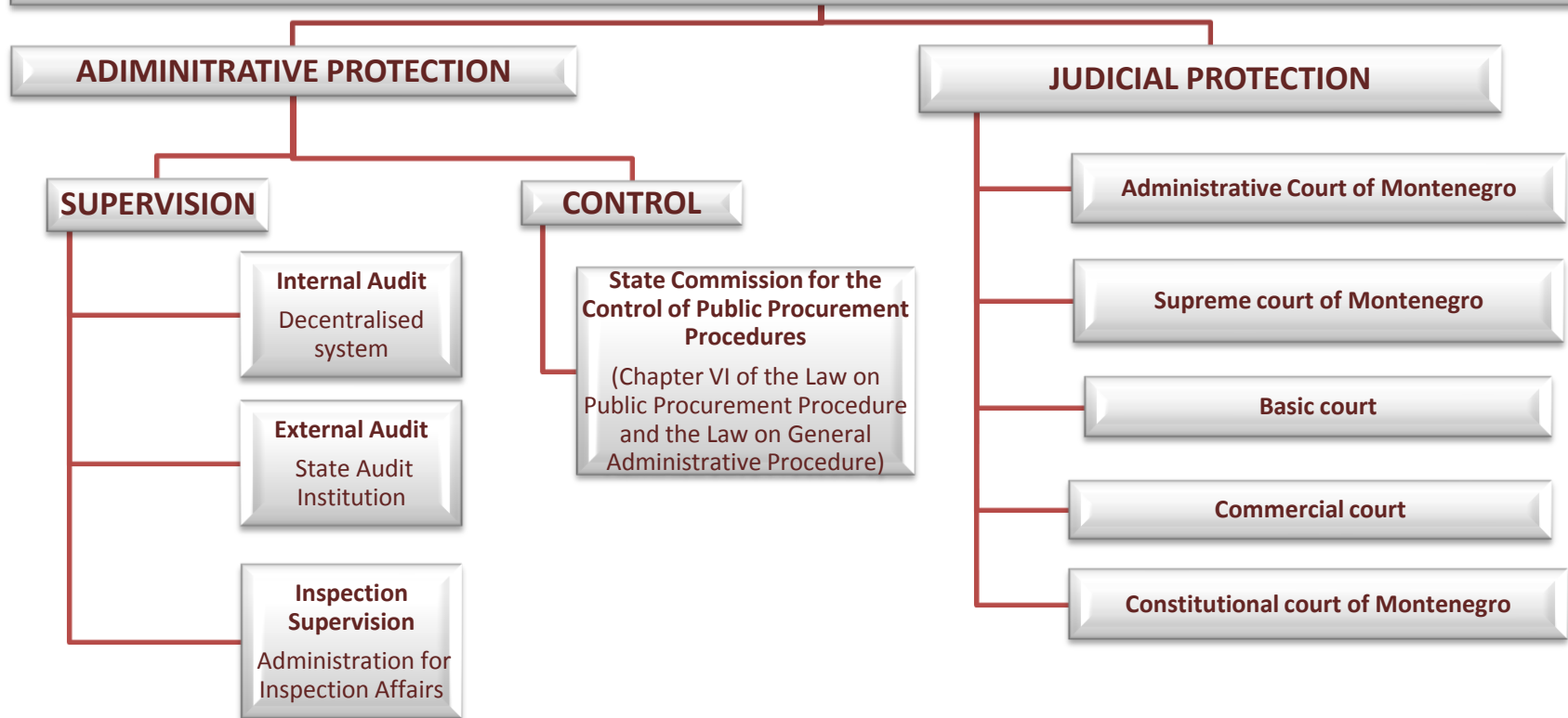
1. Legal Basis and Institutional Framework

LEGAL PROTECTION

Constitution of Montenegro ("Official Gazette of Montenegro" no 1/07)

Article 19 "Everyone shall have the right to equal protection of its rights".

Article 20 "Everyone shall have the right to legal remedy against the decision ruling on the right or legally based interest thereof."



2. Pre – contractual Protection

State Commission for the Control of the Public Procurement

- Independent and autonomous legal entity, established by the Law.
- Composed of the President and 4 members appointed by the Government on the basis of the public announcement, professionally performing their functions.
- President may be a person fulfilling legal requirements for a judge of the Basic Court, whereas the member may be a lawyer with passed professional examination for working in state authorities with a minimum of 5 years of prior working experience.
- President and members are appointed for a period of 5 years and may be reappointed.
- Competences and authorization of the State Commission are prescribed by Article 139 of the Law on Public Procurement.



Procedure Initiation

- Complaint shall be lodged before the State Commission, within 10 days from the day of receipt of the decision of the contracting authority or if the contracting authority fails to undertake actions that are infringing the rights of tenderers or person interested in the public procurement procedure. The right to appeal have bidders and all other interested persons.
 - Complaint may be lodged against all phases of the public procurement procedure, as well as against the decision on selection of the most advantageous tender.
- **STAND STILL PERIOD:**
- Timely presented complaint shall postpone all further activities of the contracting authority until the adoption of the decision on complaint;
 - ❖ Exception;
 - Public procurement contract may not be concluded prior to the expiration of the stand still period of the complaint and the adoption of the decision on complaint.
- Fee for the procedure.



Deciding on Complaint

- Permission of the contracting authority to decide on appeal;
- State Commission shall decide on complaint within 15 days from the day of receipt of the complaint. Exceptionally, the deadline may be extended to additional 10 days;
- The Decision of the State Commission for the Control of Public Procurement Procedures;
- Reasoned decision of the State Commission for the Control of Public Procurement Procedures shall be delivered within three days to the applicant and to the contracting authority and shall be published on the website www.kontrola-nabavki.me;
- An administrative proceeding may be initiated against the final decision of the State Commission.



Control of the Public Procurement Procedure

- State Commission carries out the control of the public procurement procedures, the value of which is exceeding EUR 500.000;
- Within 5 days from the day of publishing the decision on the most advantageous tender, the Contracting Authority is obliged to submit the complete documentation to the State Commission for the purpose of control;
- Any contract entered prior to adoption of the decision of the State Commission, shall be considered null and void;
- State Commission shall carry out the control within 30 days from the day of documentation submission.



3. Post – contractual Protection

Judiciary Protection

- **ADMINISTRATIVE COURT OF MONTENEGRO** –decides in administrative disputes on the legality of the State Commission’s decision and on the request for reopening the administrative proceeding, inter alia, of “a person who was supposed to participate in a procedure as a party, or interested person, and who was deprived of the opportunity to participate in an administrative proceeding”
- **SUPREME COURT OF MONTENEGRO** – decides on the request of a party that participated in the administrative proceeding and state prosecutor, on extraordinary legal remedies against the decision of the Administrative Court and decides on the request for reopening of the procedure completed on the basis of the final ruling, inter alia, if “interested person was deprived of the possibility to participate in the administrative proceeding”
- **CONSTITUTIONAL COURT OF MONTENEGRO** – decides on constitutional complaint lodged against individual act of the state authority, local – government authority or organization exercising public powers, due to the infringement of human rights and freedoms guaranteed by the Constitution, after exhausting all effective legal remedies.
- **BASIC COURTS** – decides on complaints lodged against the invalidity of a contract, - decides on complaints lodged for compensation of damages, - decide on the criminal offense, seizure of proceeds of crime and decides on a claim under property of injured party.
- **COMMERCIAL COURT** - in first degree decides in disputes between companies, entrepreneurs and other legal entities which do business activity from their economic relations.



Data on State Commission's work in 2012 year

