



REPUBLIKA HRVATSKA

DRŽAVNA KOMISIJA
ZA KONTROLU
POSTUPAKA
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dkom.hr

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WORK REPORT

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INRODUCTION

The State Commission for the Supervision of Public Procurement Procedures (hereinafter: “the State Commission”) is a specific, independent and autonomous quasi-judicial state body providing review in public procurement procedures.

The State Commission was established in 2003, and in its many years of work, the State Commission has always strived to achieve three goals: transparency, efficiency and independence. Developing tools and mechanisms to achieve the maximum degree of transparency, as a prerequisite for effective legal protection in an area considered particularly vulnerable to corruption, the State Commission, on its own initiative, made the Register of Appellate Cases publicly accessible, and later, meeting a statutory obligation, it allowed the publication of all the decisions of the State Commission, which can thus be examined by the general public.

Recognizing independence as an ideal to be pursued through day-to-day work in each individual appellate case, the State Commission sought to maintain its assigned status of an autonomous and independent state body through the random assignment of appellate cases, the way in which the facts of the case are established, and by reporting on the established facts of the case and the decision-making process.

The role of the State Commission in the public procurement system is reflected not only in rapid and effective corrective action in individual cases of illegalities, but also in general preventive action by reducing corruption risks through the public announcement of all decisions of the State Commission. The general preventive action of the State Commission is also reflected in the prevention of irregularities in future public procurement procedures by creating legal practice. In addition to the above, the State Commission has the chance and the obligation to point out the possibility of further improvement of practice on the basis of data and observed occurrences in appellate proceedings, by submitting annual reports within the obligation to state its view and assessment of the situation in public procurement in general and in legal protection, and also in procedures and legislation within the public procurement system.

The State Commission is highly esteemed in the Croatian general and professional public, as well as in the institutions of the European Commission, primarily in terms of its efficiency and legal consistency. According to the comparative indicators on review in the EU Member States, the effects of review in the Republic of Croatia are ranked highly.

During its work, the State Commission has developed both as an institution and as an authority in the field of public procurement in step with the overall system. It has always tried to fulfil its responsibility with the least possible restrictions, avoiding the extensive length of public procurement procedures. Achieving this goal was a particular challenge during 2020 due to the extraordinary circumstances caused by the pandemic and the consequences of the earthquake that hit Croatia. Despite all the challenges, and thanks to the dedicated and persistent work of employees of the State Commission and due to exceptional efforts made in recent years in the digitalization of appeals and digitalization of internal operations, the State Commission in 2020 managed to achieve exceptional results, reduction of average deadlines for resolving appeal cases as well as reduction of the number of decisions of the State Commission that were annulled by the High Administrative Court of the Republic of Croatia as a second instance body.

In 2020, despite unexpected temptations, the State Commission, thanks to exceptional efforts, made a significant contribution to further strengthening the confidence of participants in the public procurement system. Also, by ensuring the smooth functioning of legal protection within the public procurement system, it has contributed to reducing obstacles for the expected rapid economic recovery and for the investments.

1. ABOUT THE STATE COMMISSION

The State Commission is an autonomous and independent state body responsible for deciding on appeals related to public procurement procedures, concession award procedures and private partner selection procedures in public-private partnership projects. Specific quasi-judicial competence is reflected in its structure and procedures, as well as in the binding nature of its decisions.

Pursuant to Article 18, paragraphs 1, 2 and 3 of the State Commission for the Control of Public Procurement Procedures Act (Official Gazette, No. 18/13, 127/13, 74/14, 98/19 and 41/21, hereinafter: the State Commission Act), the State Commission is obliged to submit a report on its work to the Croatian Parliament once a year, and, at the request of the Croatian Parliament, it is obliged to submit a report for a period shorter than a year. Data and analyses of appellate cases in public procurement procedures, concession award procedures and private partner selection procedures in public-private partnership projects are an integral part of the annual report.

Considering the thoroughness and depth of insight into the application of the provisions of the Public Procurement Act (Official Gazette, No. 120/16, hereinafter: “PPA 2016”), and especially the procedural provisions on review, an assessment of the situation in public procurement, which refers to both public procurement and review procedures, as well as the institutional framework of public procurement, is an integral part of the State Commission’s Report.

1.1. The Structure and Organisation of the State Commission

The Decree on the Internal Structure of the State Commission for Supervision of Public Procurement Procedures (Official Gazette 84/13 and 145/14, hereinafter: “the Internal Structure Decree”) regulates the internal structure, organization, modalities of work and other issues of importance for the work of the State Commission.

The State Commission consists of the members of the State Commission and professional staff.

The State Commission, in a narrower sense, consists of nine members, one of whom is the President, two Deputy Presidents, and six members, who have a specific status because they are appointed for a term of five years by the Croatian Parliament, at the proposal of the Government of the Republic of Croatia, with pre-prescribed requirements for appointment and

reasons for dismissal. They have the status of officials only in terms of the legislation governing the prevention of conflicts of interest, but not the legislation governing the obligations and rights of state officials. The basic function of the members of the State Commission is to render decisions in review procedures. The employment status of members of the State Commission is not regulated by the State Commission Act, i.e. it is not regulated whether the members of the State Commission are civil servants or state officials, which causes difficulties in exercising the rights and obligations arising from employment. Significant progress and regulation of the status of members of the State Commission has been achieved by the Law on Amendments to the State Commission for Control of Public Procurement Procedures Act (Official Gazette 41/21), which regulates the rights and obligations of members of the State Commission, its bodies, precisely determines the beginning and end of the mandate, adds provisions related to the termination of the mandate by force of law and prescribes a public call as a method of selecting candidates to be proposed by the Government of the Republic of Croatia to the Croatian Parliament. These amendments to the State Commission Act are the result of many years of pointing out (in the State Commission's Reports) that there is underregulation and that there are shortcomings to the existing legislative solution. The adopted amendments contribute to the transparency and efficiency of the work of the State Commission, and have an appropriate anti-corruption effect, given that the rights of members of the State Commission are regulated regarding to the expiration of their mandate. The mentioned amendments to the State Commission Act also eliminated the corruption risk, which arose from the unregulated status of the members of the State Commission, and which the State Commission pointed out in its previous Work Reports. The State Commission is aware of the importance of daily prevention of corruption risks and in that sense it is plan in 2021 to adopt a Code of Ethics for all employees of the State Commission, which will contain special provisions specific to employees of the State Commission, respecting the scope, competence, specifics of the work and the importance of the State Commission.

The State Commission's professional staff are: the Secretariat with the Registry, Professional Staff for Decisions on Appeals, and Professional Staff for Monitoring Case Law and Court Procedures.

1.2. The Financial Performance Indicators of the State Commission

Funds for the work of the State Commission are provided from the State Budget, and include funds for salaries, funds for material expenditures and funds for the acquisition of non-financial

assets within material costs. The State Commission has no revenues other than budget revenues, and the fee paid for initiating appellate procedures in public procurement (according to the provisions of the PPA 2016) is paid directly into the State Budget and is the revenue of the State Budget.

The total plan for 2020 amounted to HRK 10,485,679.00 from the State Budget. Of this amount, HRK 8,146,468.00 was planned for salaries, HRK 2,066,000.00 for material expenses, HRK 6,708.00 for financial expenses and HRK 266,503.00 is planned for the acquisition of non-financial assets.

The total execution amounts to HRK 9,987,289.82 or 95.20%.

HRK 8,146,468.00 was planned for the salaries of employees, and the execution is HRK 7,802,831.64 or 95.78%.

HRK 2,066,000.00 was planned for material costs, and execution is HRK 1,915,041.83 or 92.69%. Of the total execution of material costs, 40.05% refers to rents and leases, where the largest item is the lease of business premises. Out of HRK 6,708.00 of the planned funds for financial expenses, HRK 2,642.00 or 39.39% was executed, mainly for banking services.

HRK 266,503.00 was planned for the acquisition of non-financial assets within material costs, of which HRK 266,764.35 or 100% was executed, mainly for the procurement of technical equipment, and the adaptation of applications that enable work in procedures in which an e-appeal was filed, and a search of decisions rendered by the State Commission.

In 2020, the amount of HRK 16,016,391.52 was paid into the state budget that was collected from the fees for initiating appellate procedures.

It is clear from the above that, on the basis of the amount of fees paid for initiating appellate procedures, HRK 5,530,712.52 more funds were paid into the State Budget of the Republic of Croatia than the funds planned for the work of the State Commission for 2020.

1.3. Human Resources

The structure and number of employees of the State Commission are regulated by the Internal Structure Decree.

In 2020, a total of 33 people were employed in the State Commission since one civil servant terminated his civil service in March 2020. It follows from the above that the total vacancy rate is 68.75% (33 of the 48 vacancies provided by the Regulation on Internal Organization).

In addition to the termination of one civil servant's civil service, in the period from 1 January to 15 June 2020, the State Commission worked with 8 members (or one less member), since on 20 December 2019 the term of office for one member has expired, while the other member began to work on 16 June 2020. This made everyday work more difficult because the State Commission, as a rule, makes decisions in councils composed of three members, and three councils with different members are formed in the State Commission.

All members of the State Commission are persons with a graduate university degree. Women (77.77%) have a larger share among members.

The Professional Staff for Decisions on Appeals employs a total of 16 civil servants, all of whom have completed their graduate university studies in law and passed the bar exam. A larger share of civil servants assigned to positions in the Professional Staff for Decisions on Appeals is occupied by women - 13 civil servants (81.25%).

The Professional Staff for Monitoring Case Law and Court Procedures employs a total of 5 civil servants, all of whom have completed a graduate university degree in law and passed the bar exam. A larger share among civil servants assigned to positions in the Professional Staff for Monitoring Case Law and Court Procedures is occupied by women - 3 civil servants (60.00%).

A high level of awareness of gender equality emerges from these data.

On 11 March 2020, the Minister of Health issued a Decision declaring an epidemic of COVID-19 disease caused by the SARS-CoV-2 virus, CLASS: 011-02 / 20-01 / 143, REGISTRATION NUMBER: 534-02-01-2/6-20 -01 and, thanks to the selfless dedication of all employees of the State Commission, in this challenging time of uncertainty and unknowns, orderly and timely work was performed within the competence and scope of the State Commission.

These new circumstances required daily adjustment, where all relevant decisions, instructions and recommendations of the Ministry of Justice and Administration and the Civil Protection Headquarters of the Republic of Croatia, were consistently and appropriately implemented, ie the work processes in the State Commission were adjusted.

The implementation of these decisions and instructions is ensured by adopting and executing the Decision on work organization, schedule and working hours of the State Commission, based on which the work of the State Commission was organized into two groups of necessary staff in the period from March 19 to May 18, 2020, and from October 26 to December 31, 2020. These groups worked independently of each other, and thus ensured the continuous performance of tasks within the competence and scope of the State Commission.

The State Commission has been, and remains consistent in the digitalization of internal business processes, and in order to ensure uninterrupted work from home, it has provided all members, senior expert advisors - specialists and expert advisors - specialists with conditions and means for work at a separate workplace. This challenge of a different work environment, and way of working, has been successfully overcome, which is clearly evidenced by the results achieved in 2020.

After the 16 years of work of the State Commission, the need for training and career management of professionals in the field of public procurement is clearly visible. They must have the appropriate qualifications, training, skills and experience necessary for their level of responsibility. The State Commission, as a quasi-judicial body and authority in the field of public procurement, is the creator of case law, and by its decisions it significantly influences the conduct of public procurement procedures, not only directly by rendering decisions in specific public procurement procedures, but also indirectly in the way that its decisions are a source of knowledge in the conduct of public procurement procedures on which all participants in the procedures rely. Therefore, the State Commission is committed to continuous and consistent improvement, and the enhancement of the quality of the knowledge of its experts who participate in the decision-making process.

Despite the new situation, the State Commission remained committed to the continuous professional development of its employees. In 2020, the State Commission actively participated in the Lifelong Professional Development Program of the Judicial Academy, and expert advisors - specialists and members of the State Commission attended workshops on European and international law, administrative law and skills. They also participated in the relevant programs of the State School of Public Administration.

During 2020, training was also conducted through the exchange of experiences, knowledge and good practice through cooperation with other comparable bodies in the European Union, as well as through cooperation with the European Commission and its expert groups.

The systematic work of the Expert Service for Monitoring Case Law and Court Procedures made a significant contribution to the education, because it acquaints all employees of the State Commission in a timely and comprehensive way, with the legal opinions of the European Court of Justice, the High Administrative Court of the Republic of Croatia (hereinafter: “the High Administrative Court”), the Supreme Court of the Republic of Croatia and the Constitutional Court of the Republic of Croatia. The legal opinions of the High Administrative Court are of special importance for the daily work of the State Commission, since an administrative dispute on the lawfulness of decisions of the State Commission can be initiated before that court. Monitoring and acquaintance with the practice of courts takes place on a daily basis, and at least once a month the Professional Service for Monitoring Case Law and Court Procedures submits a summary overview of the legal opinions of the courts and more significant decisions by the State Commission, which includes a breakdown by legal concepts and articles of the PPA 2016.

The structure of members and civil servants in the State Commission as of December 31, 2020:

Job Description	Number of Employees	Decree on Internal Structure of State Commission
President	1	1
Deputy Presidents	2	2
Other Members of the State Commission	6	6
Secretariat	2	5
Subdivision Registry	2	4
Professional Staff for Appellate Procedures	15	22

Professional Staff for Monitoring of Case Law and Court Procedures	5	8
Total:	33	48

The fact that State Commission's employees (members and civil servants) have many years of experience in the institution, amounting to almost 8 years, testifies to the stability of human resources and their high level of expertise, which results in better work organization and greater efficiency.

Of the total number of employees, 94% have a university degree (a Professional Master's Degree).

1.4. The Anti-Corruption Activities of the State Commission

The anti-corruption activities of the State Commission are primarily realized through the prompt performance of tasks within the competence and scope of this state body. Namely, the review of public procurement procedures, which results in the annulment of decisions and/or procedures that are found to have been conducted contrary to the law, prevents the conclusion of harmful public procurement contracts, and thus, among other things, prevents potential corrupt behaviour. At the same time, it performs a preventive function which prevents the occurrence of unlawful actions and damage.

In its work, the State Commission primarily strives to achieve integrity at the highest level, through its work processes, respecting the principles of independence, transparency, efficiency and predictability. The State Commission achieves a high level of transparency through the assignment of appeal cases, through the manner of determining the factual situation, through reporting on the established factual situation and through the decision-making process, and thus fulfills the assigned status of an independent state body.

An important anti-corruption effect lies in the publicly available case law of State Commission, which are, as well as the decisions of the High Administrative Court in public procurement disputes, published on the website of the State Commission in full, i.e. including the names of the parties. This makes the review procedures predictable and transparent, and represents the

most significant anti-corruption effect of the work of the State Commission. The importance of public publication of decisions without anonymization on the website of the State Commission is reflected in the fact that it has a deterrent effect on participants in public procurement procedures, and in relation to actions and activities within public procurement procedures that could have elements of certain crimes or corruption.

Transparency is an important anti-corruption tool, so the State Commission on its own initiative, made the Register of Appeals Publicly available on the website www.dkom.hr. The register is updated on a daily basis, and provides a general insight into the movement of cases. Thus, the entire procedure of the State Commission is available to the public, from the time required to make a decision, through the composition of the council that made the decision to the content of the decision and the manner in which it was decided. The public can also check the legality of the decisions of the State Commission, given that for each decision that is challenged before the High Administrative Court, the judgment of that court is published.

It should be noted that the State Commission, under given competence, through these activities fully fulfills its anti-corruption role, and in addition to these activities, through education and participation in professional and scientific conferences, warn participants of possible forms of corruption in public procurement and thus raise awareness of their role in preventing corruption in their daily work.

Furthermore, the entire handling of appeals and files takes place with the help of an application that allows the collection of data on appellate procedures and public procurement procedures, as well statistics, in order to establish all the facts. Through this application, all activities that take place in a particular appeal case are monitored, and in this way the transparency of work is ensured and any possibility of non-transparent conduct is prevented. This is also a precondition for the objectivity of the decision-making process, and the ability to monitor the situation and phenomena, both in appellate procedures and in public procurement procedures, which are also the data reported to the Croatian Parliament.

The PPA 2016 prescribes the obligation of the State Commission to act *ex officio* in exhaustively listed cases, to review the lawfulness of procedures and the actions of contracting authorities, with emphasis on the activities of this state body in appellate procedures regardless of the stage of the procedures in which the appeal was filed.

The content of this Report, in the part assessing the situation in public procurement, which includes analyses of the shortcomings in the legal framework, in both public procurement procedures and review procedures, and in the institutional part, allows the legislator to correct the legal framework, which also has an anti-corruption effect.

The State Commission is an active participant in the development of the Anti-Corruption Strategy and is responsible for activities in the Action Plan for 2019 and 2020 with the Anti-Corruption Strategy for the period from 2015 to 2020, which includes the detection of corruption risks. In addition to detecting corruption risks, one of the activities in the Action Plan was the publication of the most important judgments of the Court of Justice of the European Union, as well as the most important judgments of the High Administrative Court, which significantly affect the practice of the State Commission. Also, the State Commission on its own initiative publishes legal understandings that are adopted at the session of the State Commission, which harmonize the actions and practices of the State Commission and thus enable the general public to control the legality of the State Commission. Within the Action Plan, the State Commission was responsible for: Adoption of amendments to the State Commission Act, which activity was fulfilled by the adoption of the Law on Amendments to the State Commission Act in April 2021.

Also, the State Commission participated in the development of the Anti-Corruption Manual for State and Local Officials, which was envisaged as one of the measures within the Action Plan for 2020 with the Anti-Corruption Strategy for the period from 2015 to 2020. The drafting of the Anti-Corruption Manual is planned as part of the desire to intensify efforts in achieving goals in the areas of strengthening the accountability and integrity of officials, and improving the organization of public administration and legislative framework in priority strategic horizontal and sectoral areas. The aim of drafting this Manual was to strengthen the competencies of public office holders, in the area of functioning of the elements of the preventive anti-corruption mechanism and to encourage further improvement of existing anti-corruption standards in order to ensure integrity, accountability and transparency in performing public duties¹.

During 2020, the State Commission was an active participant in the drafting of the Anti-Corruption Strategy for the period from 2021 to 2030, which is still in the process of adoption.

¹ Anti-Corruption Handbook for State and Local Officials

Within the mentioned Strategy, it is planned to include the State Commission as the holder of activities in the Action Plans with the Strategy. During 2020, the State Commission continued its continuous cooperation and communication with the competent state attorney's offices in order to detect criminal offenses in the field of public procurement.

Recognizing the importance of the fight against corruption, the State Commission, in addition to the aforementioned activities, also participates in the work of the Council for the Prevention of Corruption, which is a working body of the Government of the Republic of Croatia, where consultations between competent bodies are carried out, certain issues from the national anti-corruption policy are discussed, and specific anti-corruption measures are proposed and implemented.

1.5. The Public Nature of the Work of the State Commission

Transparency and public access to the work of the State Commission is a mission that ensures both objectivity and predictability in its work.

The publicity of its work is ensured by the legal provision according to which the decisions of the State Commission are served by publication and by the internal decision according to which the Register of Appellate cases is promptly updated on a daily basis, and published on the website of the State Commission, at: www.dkom.hr. In this way, the maximum level of transparency in the work of the State Commission is ensured.

At the same time, the possibility of public insight into the work of the State Commission reduces the need for requests for access to information. In 2020, 6 requests for access to information were received, which is 50.00% less than in the previous year, and all 6 were resolved in 2020.

The official website of the State Commission (www.dkom.hr) contains relevant information related to the review system in public procurement, as well as to the work of the State Commission, and at the same address there are detailed instructions on appellate procedures. By raising the transparency of the work of the State Commission to the highest possible level, through the publication of all relevant data, full access has been provided to information on the work of this state body.

The service of decisions by publication on the website continues to contribute to significant financial savings in the work of the State Commission, especially when it is borne in mind that

several parties participate in some procedures, where everyone needs to be served the decision, under equal conditions.

In addition to the decisions of the State Commission, with the entry into force of the PPA 2016, which prescribes the publication of decisions in administrative disputes on the website of the State Commission without anonymization, after the initial standstill in the work of the High Administrative Court, the State Commission publishes judgments of the High Administrative Court rendered in individual appellate cases on the home page of the website in the same way as its own decisions.

In addition to the above, the State Commission publishes on its website the most significant judgments of the Court of Justice of the European Union, as well as the most significant judgments of the High Administrative Court, which significantly influence the practice of the State Commission.

Also, in 2020 the State Commission began publishing significant decisions of the State Commission that affect the application of the PPA 2016 in practice or indicate certain specifics in the application of the PPA 2016. As a further contribution to legal security and predictability of work, the State Commission, also on its own initiative, publishes legal understandings, adopted at the session of the State Commission, which harmonize the actions and practices of the State Commission. By doing so, the State Commission enabled the general public to control its work in a certain way, taking into account that the legal understanding adopted at the session of the State Commission, is binding on all councils, and for all members of the State Commission.

In addition to performing activities within its competence, the State Commission informs the public through its website about other activities it carries out and also about events in which it participates.

In 2020, there were 987,069 page views registered on the website of the State Commission. This indicates that the website of the State Commission is an important source of information for participants in public procurement procedures, both in terms of information related to appellate procedures, and in terms of its case law, which guide participants in the conduct of public procurement procedures. The average length of visits per page was 00:03:42 minutes, which speaks of the visibility of the page and the availability of information.

In most cases, the website www.dkom.hr is accessed via computer: 71.12% (increase compared to last year), tablets: 1.39% and mobile devices: 27.47%. The website of the State Commission is responsive, which facilitates access to and search of the website.

1.6. Other Activities of the State Commission (Bilateral and Multilateral)

In 2020, marked by the COVID-19 pandemic and devastating earthquakes, the State Commission participated to a lesser extent in activities outside the State Commission. The necessary meetings took place through online platforms.

However, in 2020 the State Commission continued to work on strengthening cooperation with comparative bodies in other Member States through participation in the expert group of audit bodies in public procurement at EU level, led by the European Commission, DG GROW. During 2020, one expert group meeting was held, also through the online meeting platform. At the meeting, various initiatives of the European Commission were presented to support contracting authorities in their response to the emergency situation caused by the COVID-19 pandemic. The functioning of audit bodies within the pandemic, and the impact of the pandemic on the work and efficiency of audit bodies, were also discussed.

In April 2020, the State Commission and the Central Agency for Financing and Contracting of EU Programs and Projects, concluded an Agreement on cooperation in the implementation of the twinning project "Strengthening budget planning, execution and internal control functions" (twinning number: MK 18 IPA FI 01 19), and the beneficiaries of the project are the Ministry of Finance, the Public Procurement Administration and the State Public Procurement Appeals Commission of the Republic of Northern Macedonia. Pursuant to this agreement, the State Commission, i.e. its employees, will participate throughout this project in the capacity of experts who will make available their knowledge and experience in performing tasks in the State Commission to the beneficiary - the State Public Procurement Appeals Commission of Northern Macedonia, in order to strengthen the capacity of this appellate body, improve its internal organization, efficiency, transparency and decision-making, as well as make recommendations for improving practice in the most important institutes in the field of public procurement. Participation in this project enables the exchange of experiences and best practices, and also contributes to strengthening the overall competencies of employees of the State Commission through their participation as project experts who have the opportunity to transfer their knowledge and expertise to colleagues in other countries.

2. STATISTICAL INDICATORS OF THE WORK OF THE STATE COMMISSION

2.1. Pending Cases

In 2020, there was a total of 1,196 pending appellate cases before the State Commission, of which 107 were transferred from 2019, and 1,089 were cases newly received.

2.1.1. The Total Number of Appellate Cases Pending

Type	Number
Cases transferred from 2019*	107
Appeals received in 2020	1089
Total	1196

* Cases transferred from 2019 were not resolved in 2019 mostly because appeals are also received at the very end of the year (104 cases were received in December 2019) and it was impossible to complete the case file documentation in these cases and start to resolve these appeals in 2019.

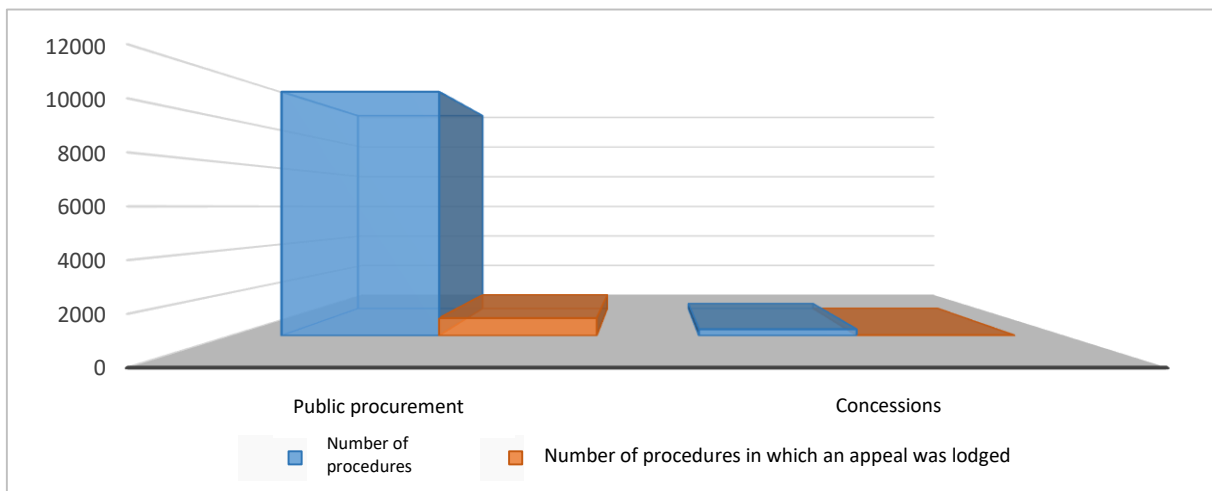
2.1.2. The Number of Appeals Received

Type	Number	%
Public Procurement	1066	97,89
Concessions	23	2,11
Public-private partnership	0	0
Total	1089	100

In the vast majority of cases appeals are lodged in public procurement procedures, and only 2.11% in concession award procedures, while in procedures for selection of public-private partners no appeal was received in 2020.

2.1.3. Comparison of the Number of Published Procedures and the Number of Procedures in which an Appeal was Lodged

	Number of Procedures Published in 2020 (Classifieds)	Number of Procedures in which an Appeal was Lodged in 2020	%
Public Procurement	11,289	816	7.23
Concessions	300	20	6.67



In 2020, the State Commission reviewed 7.23% of the total number of public procurement procedures, which is an increase compared to the previous 2019 (6.59%). It should be noted here that in 2020 there was a decrease in the total number of public procurement procedures published in the Electronic Public Procurement Classifieds (EPPC) by 14% compared to the number of procedures published in 2019, which can be attributed in part to the effects of the pandemic and the fact that at a certain point during 2020, by the decision of the Government of the Republic of Croatia, users of the State Budget, due to the COVID-19 pandemic, were prohibited from initiating new public procurement procedures. The increased share of appeals in relation to the number of published public procurement procedures during 2020 may be

related to the increased interest of economic operators in awarding contracts under public procurement procedures, in the context of a pandemic due to fear of financial crisis and business difficulties.

In 2020, the State Commission controlled 6.67% of the total number of concession procedures, which is an increase compared to the previous 2019 (3.25%). This is a significant increase, bearing in mind the fact that compared to 2019, the number of published concession procedures was reduced by 11%.

2.1.4. Comparison of the Number of Cases Received in the period 2014-2019

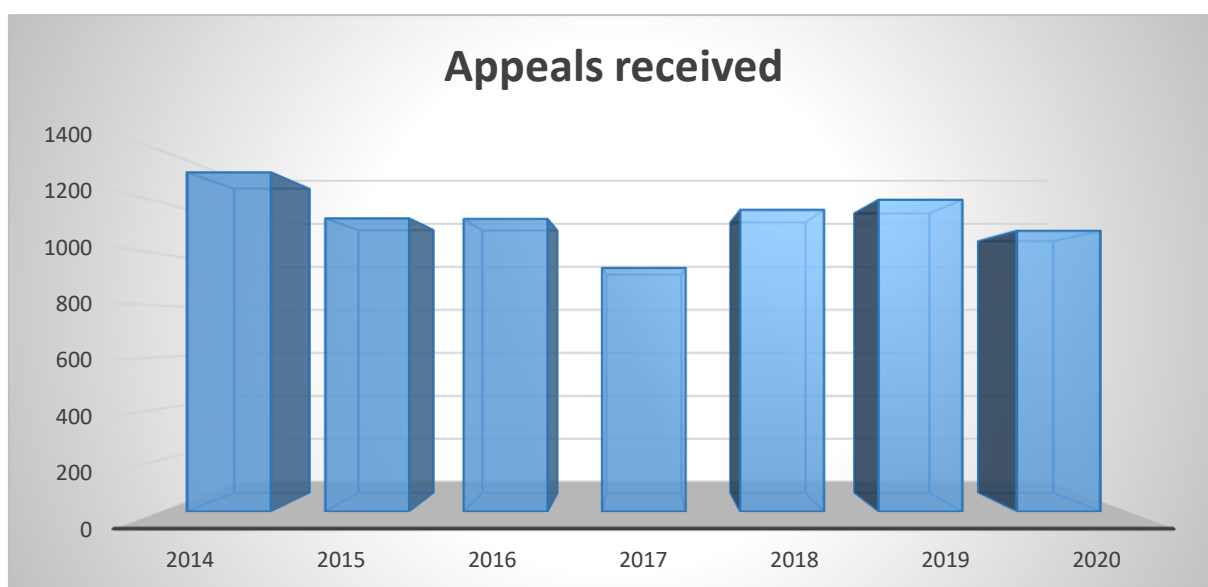
During 2020, the State Commission received 1089 appeals. In relation to the total number of cases pending before this state body (1196), the average number of appeals pending on a monthly basis was 99 cases.

Year	Appeals received	Comparison with the Previous Year	
2014	1315	-	-
2015	1137	15/14	-13.54 %
2016	1135	16/15	-0.18 %
2017	945	17/16	-16.74 %
2018	1170	18/17	+23.80%
2019	1209	19/18	+3.33%
2020	1089	20/19	-9.92%

Although in the period from 2014-2017 a decrease in the number of appeals was recorded, at the same time there was a continuous increase in the complexity of appellate cases related to the possibility of using EU funds, but also the increasing involvement of practicing attorneys specialized in public procurement, and the participation of consultants.

However, in 2018 the number of appellate cases increased again by 23.80% compared to the previous year, which can be attributed to the logical consequence of the application of the PPA 2016. Namely, the PPA 2016 entered into force on 1 January 2017, which means that it was only in 2018, after the case law became established and a certain degree of legal certainty was achieved, and after the *ex-officio* review of the procedures was made possible, that a larger number of received appeals was recorded. A larger inflow of appeals continued in 2019.

In 2020, the number of received appeal cases decreased by 9.92%. However, it should be noted the previously presented data on the total decrease in the number of public procurement procedures published in the EPPC, and in what context there was an increase in the share of public procurement procedures that were subject to control before the State Commission.

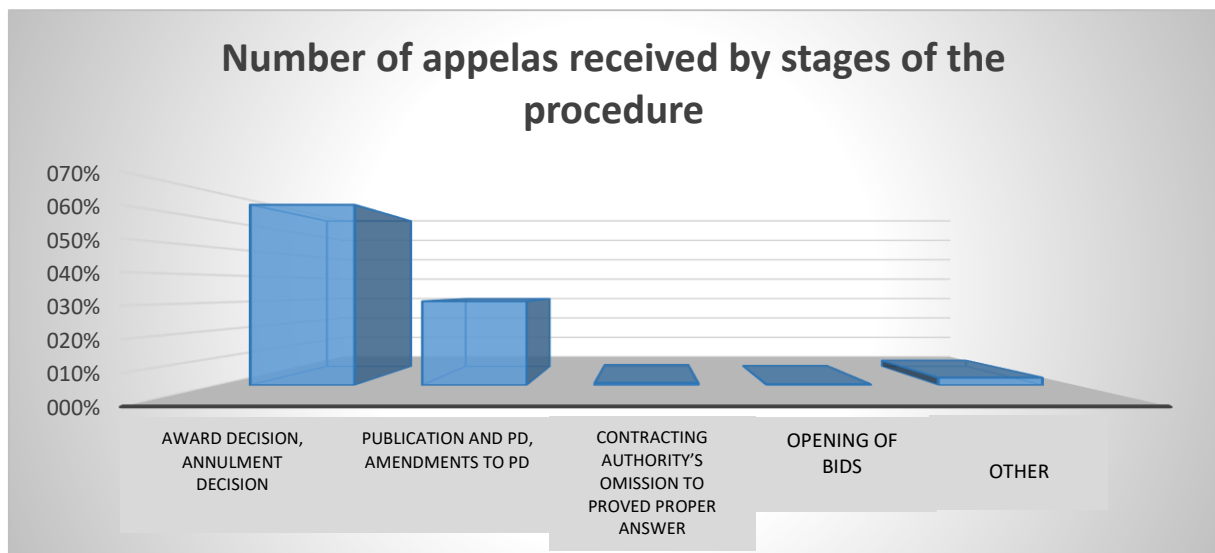


2.2. The Number of Appeals Received by Stages of the Procedures

No.	Stage	Public Procurement	Concessions	PPP	Total	%
1.	Award decision; Annulment decision	701	13	-	714	65.56
2.	Publication and procurement documentation (PD), amendments to	325	7	-	332	30.49

	procurement documentation (PD)					
3.	Failure of contracting authority to provide proper answer	9	0	-	9	0.83
4.	Opening of tender applications	3	1	-	4	0.37
5.	Other*	28	2	-	30	2.75
6.	Total	1066	23	-	1089	100

* Appeals in relation to other actions, decisions, procedures and omissions by contracting authorities



In 2020, out of the total number of received appeals, 30.49% of appeals were reported on the procurement documentation, which is a slight decrease compared to 2019 (31.85%). However, there are still a large number of appeals against procurement documents, largely due to the single fee for initiating appeal proceedings in the amount of HRK 5,000.00, regardless of the estimated value of the procurement.

Review of public procurement procedures in the early phase of published documentation or amendments to the procurement documentation significantly affects the quality of implementation of public procurement procedures and indirectly leads to avoidance of certain irregularities that result in financial corrections in procedures financed from EU funds.

2.3. The Number of Unresolved Cases

Cases Received in 2020	Resolved Cases	Unresolved Cases
1089*	992	97*
100%	91.10%	8.90%

*In 2020, there were a total of 1196 cases pending, since 107 cases were transferred from 2019.

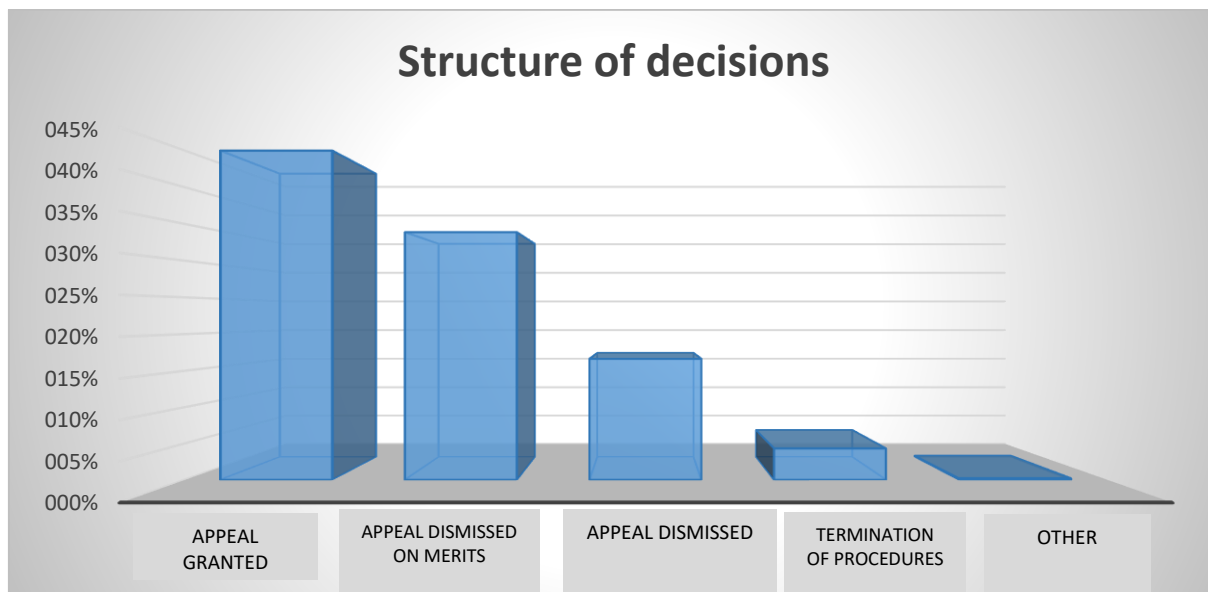
*On 31 December 2020, 97 cases had not been resolved, mostly received at the end of the year (111 appeals in December), whose resolution continued in 2021 within the time limits set by law.

2.4. The Structure of Decisions in Appellate Cases

The total number of cases pending in 2020 (1196) consists of cases transferred from 2019 (107), and those received in 2020 (1089).

For the purposes of this report, the cases received and resolved in 2020 are analyzed, 992 of them, i.e. the data on cases transferred to 2021 are not presented (97).

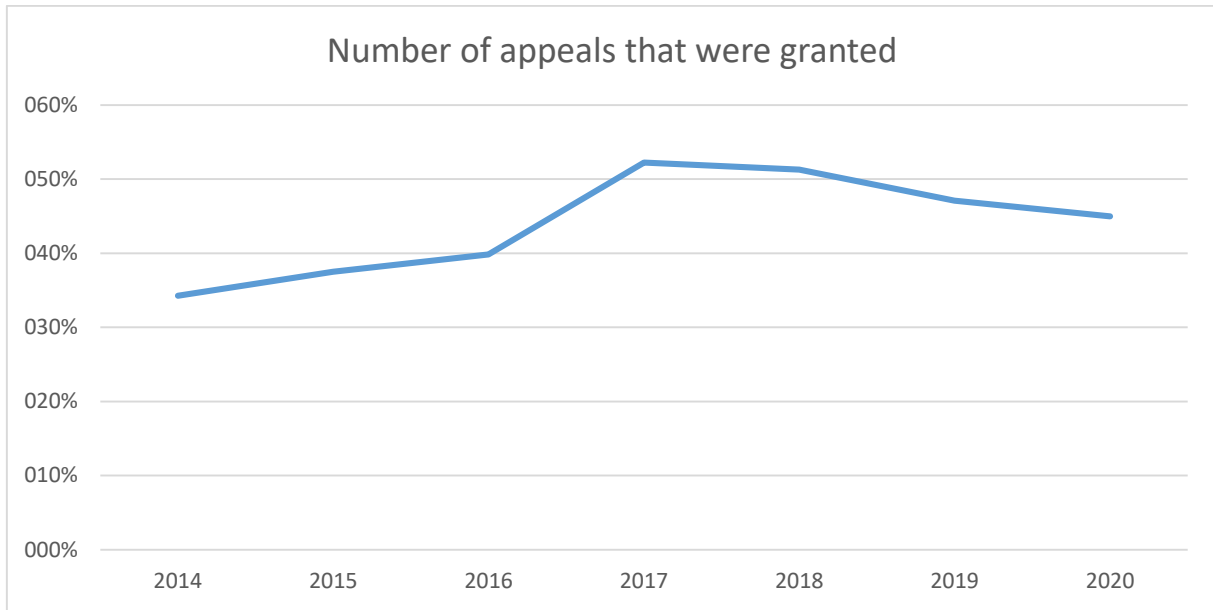
Type of Decision	Number	%
Appeal granted	446	44.96
Appeal dismissed on merits	336	33.87
Appeal dismissed	165	16.63
Termination of procedures	43	4.33
Other	2	0.21
TOTAL	992	100



The trend of a high percentage of granted appeals (44.96%) has continued in comparison to 2019 (47.10%), which to a different extent results in the annulment of the contracting authority’s decisions, procedures or actions. Although the percentage of appeals granted over the years is high, a downward trend can be nevertheless observed, i.e. a decrease in this percentage compared to the previous year indicating an increase in the expertise of all participants in the public procurement procedure, which precedes the appellate procedure.

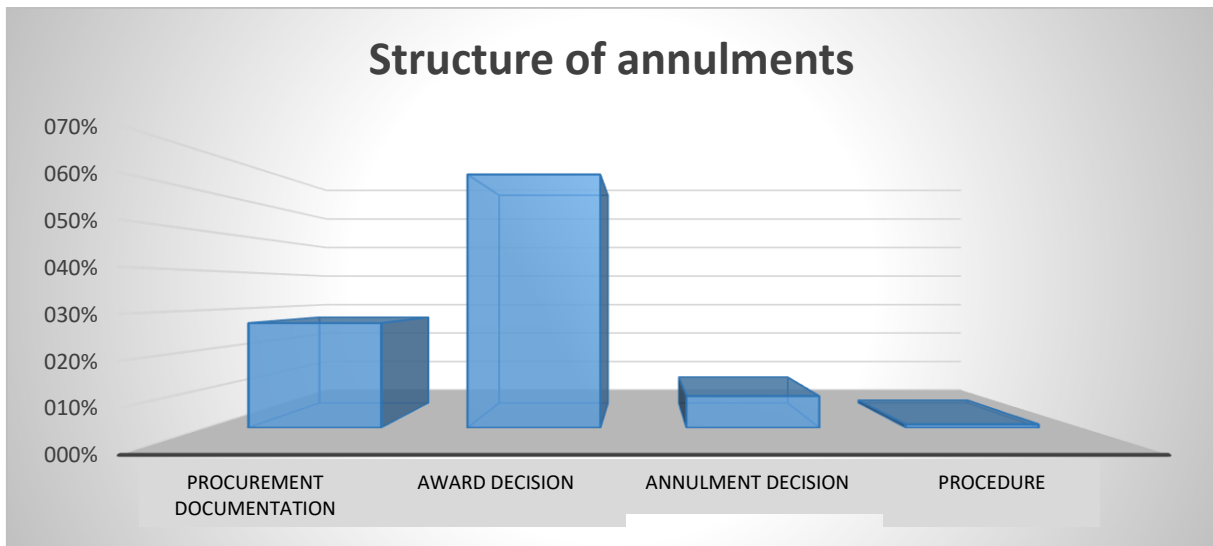
Although the trend of a high percentage of appeals in 2020 continued, there was a slight decline in the number of appeals (2019 - 519 appeals; 2020 - 446 appeals) with a simultaneous increase in the number of appeals dismissed on merits (2019 - 281 appeals; 2020 - 336 appeals). This positive trend indicates an increased level of expertise of all participants in the procedure.

In the observed period, there was a fairly high percentage of appellate cases in which the appeal was dismissed – a total of 16.63%. This percentage represents a significant reduction compared to 2019, when the appeal was dismissed in 22.05% of cases. This decrease in the number of dismissed appeals could potentially be explained by an increase in the level of procedural knowledge in the appellate procedure, primarily appellants.



2.5. The Structure of Annulments (Decisions, Procedures and Actions of Contracting Authorities Affected by Unlawfulness)

Subject of Annulment	Number	%
Procurement documentation	119	26.68
Award decision	287	64.35
Annulment decision	36	8.07
Procedure	4	0.90
TOTAL	446	100



In 2020, the largest number of appellate cases in which the appeal was granted were related to the annulment of the award decision (64.35%).

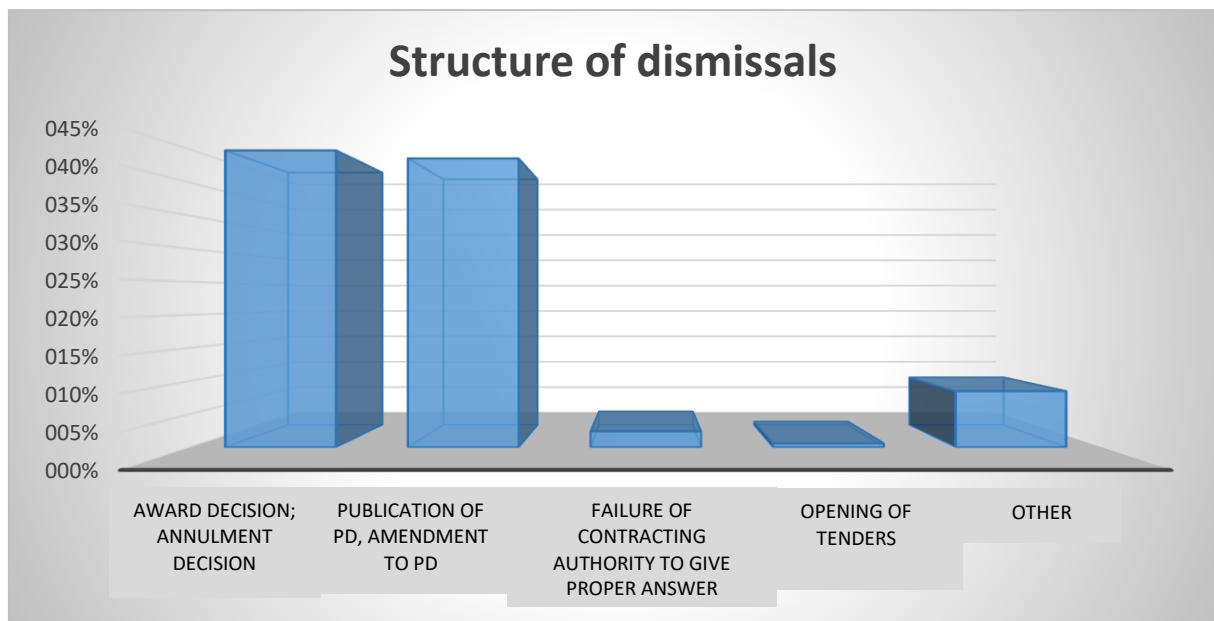
In 2020, only four filed appeals resulted in the annulment of the entire public procurement procedure, which is a significant decrease compared to 2019 (when there were 21 annulled procedures). That also resulted in a reduction of the need to reopen public procurement procedures after the decision by the State Commission. Also, this indicates a decrease in the number of particularly essential violations, which result in the annulment of the public procurement procedures. The decrease in the number of annulled public procurement procedures is causally related to the number of appeals granted in the procurement documentation phase, since particularly essential violations of the public procurement procedures, which were sanctioned and eliminated at that stage of procedures, cannot result in annulment of the public procurement procedures in the stage of appeal against the award decision. This also indicates an increasing level of expertise in the fourth year of application of the PPA 2016.

2.6. The Structure of Dismissals

In 2020, a total of 165 decisions were issued dismissing the appeal, which represents 16.63% of the total cases resolved. This percentage represents reduction compared to 2019 when the appeal was dismissed in 22.05% of cases. Of the total number of appeals dismissed in 2020, the largest number refers to appeals lodged in the procurement documentation phase (43.64%) and regarding award decision (44.85%).

Stage	Number	%
Award decision; Annulment decision	74	44.85
Publication of procurement documentation, Amendment to procurement documentation	72	43.64
Failure of contracting authority to give proper answer	4	2.42
Opening of tenders	1	0.61
Other*	14	8.48
TOTAL	165	100

* Appeals against other actions, decisions, proceedings and omissions of contracting authorities.



When the data on dismissed appeals are analyzed in relation to the stages of the procurement procedures, it can be noticed that there is an equal share of dismissed appeals in the phase of appeal against procurement documentation (basic documentation and changes) and in the phase of appeal against the award decision / annulment.

Compared to 2019, when 125 appeals filed against procurement documentation were dismissed, in 2020 such appeals were dismissed in 72 cases, which indicates an increased number of

appeals on the merits, and potentially a smaller number of possible abuses of procedural powers in terms of making untimely or irregular appeals.

2.7. The Structure of Decisions in the Stages of Publication, Procurement Documentation and Modifications of Procurement Documentation

In 2020, 332 appeals were received related to the phase of publication and of amendment of procurement documentation. Of these, 299 were resolved in 2020. In the largest number of cases, the appeal was granted (39.80%).

Type of Decisions in Stages of Publication, Procurement Documentation and Amendments to Procurement Documentation	Number	%
Appeal granted	119	39.80
Appeal dismissed on merits	91	30.43
Appeal dismissed	72	24.08
Termination of procedures	17	5.69
TOTAL	299	100

Appeals lodged at the stages of publication, procurement documentation and amendments to procurement documentation prevent the continuation of the public procurement procedures. Given the large number of dismissals and terminations in this phase (Total 29.77%), the issue of abuse of the right to appeal in this phase of the public procurement procedures was raised. At the same time, a more detailed analysis of appeals against procurement documentation and amendments to procurement documentation showed that not a negligible number of appeals were lodged in the period immediately before the opening of tenders, which is generally not in line with the time limits prescribed by the PPA 2016.

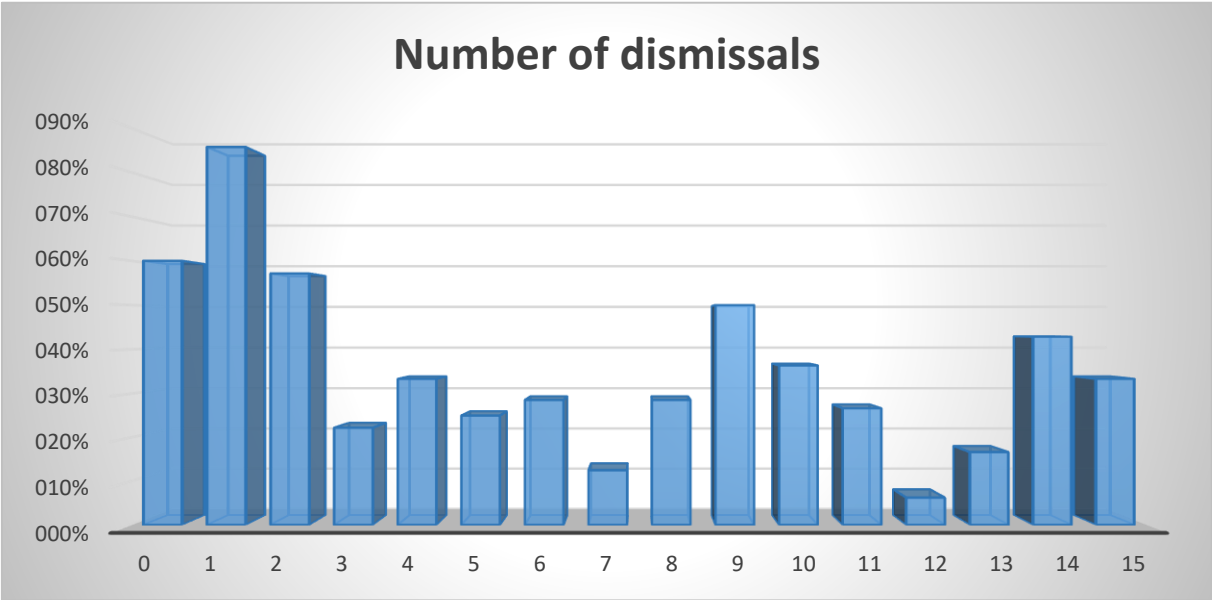
The table below shows the number of days between the date the appeal was lodged and the deadline for submission of tenders (ending on the fifteenth day before the opening of tenders), and the total number of appeals for each of these days.

Number of Days	Number of appeals lodged 15 days before the opening of bids; year 2020.				TOTAL
	Appeal Granted	Appeal Dismissed on Merits	Appeal Dismissed	Termination	
0	2	2	6	-	10
1	1	1	12	-	14
2	-	3	4	-	7
3	2	3	2	2	9
4	2	2	3	2	9
5	-	6	2	-	8
6	2	3	2	-	7
7	2	5	1	-	8
8	8	2	4	-	14
9	-	1	2	1	4
10	5	1	4	1	11
11	6	3	4	2	15
12	6	7	1	2	16
13	1	3	1	1	6
14	4	-	3	-	7
15	4	2	3	-	9

The percentage of lodged appeals that were granted in a period of four days before the opening of tenders up until the final deadline for opening tenders was 14.28%, which drastically deviates from both the total number of appeals granted in the phase of publication of the invitation to submit tenders and procurement documentation, which is 35.84%, and the total percentage of appeals granted in all procedures before the State Commission, which amounts to 44.96%.

At the same time, in the total number of appeals lodged in the same period (in the period from four days before the opening of tenders up until the final deadline for opening of tenders), the percentage of those dismissed or in relation to which the proceedings were terminated, is as high as 63.27%.

For the sake of clarity, the graph below shows the percentage of appeals dismissed for each number of days between the day of filing the appeal and the deadline for submission of tenders (ending on the fifteenth day before the opening of tenders).



In order to compare the data with the data from 2019, below is the table that was an integral part of the Work Report for 2019, and it also shows the number of days between the day of lodging the appeal and the deadline for submission of tenders (including the fifteenth day before opening tenders) and the total number of appeals for each of these days.

Number of Days	Number of appeals lodged 15 days before the opening of bids; year 2019				TOTAL
	Appeal Granted	Appeal Dismissed on Merits	Appeal Dismissed	Termination	
0	1	-	8	2	11
1	5	3	9	1	18
2	3	4	17	1	25
3	3	3	13	-	19
4	-	4	9	-	13
5	2	-	4	1	7
6	1	-	3	-	4
7	4	3	8	2	17
8	4	3	6	-	13
9	5	2	5	1	13
10	3	-	5	-	8
11	12	3	4	4	23
12	7	3	1	1	12

13	5	-	2	-	7
14	4	2	4	3	13
15	2	2	2	1	7

It can be seen, from the table regarding the 2019, that the majority of such appeals, lodged immediately before the opening of tenders, were dismissed, while very few of the procedures initiated on these appeals resulted in the granting of appeals.

Comparison of the percentage of accepted appeals filed in 2019 in the period from four days before the opening of tenders until the deadline for opening tenders (which was 13.9%), in relation to the percentage of the total number of accepted appeals in the call for tenders and procurement documents (which amounted to 38.12%) and the total percentage of granted appeals in all proceedings before the State Commission (which amounted to 47.10%), with the above comparative data for 2020, shows the same trends, i.e., it is evident that the number of granted appeals in the compared period (from four days before the opening of bids) is still relatively small in relation to the total number of appeals granted in the phase of invitation for tenders and publication of procurement documents, and the total number of appeals granted in proceedings before the State Commission.

Furthermore, there is no significant deviation between 2019 (69.7%) and 2020 (63.27%) regarding the percentage of the the total number of appeals lodged in the period from four days before the opening of tenders until the deadline for opening tenders, and the appeals for which the procedure has been terminated, or in other words, there is still high percentage of the appeals that are dismissed or regarding which the proceedings were terminated.

The comparison of data presented may indicate something that is specifically substantiated in point 4.2.2. of this report, which is that by filing appeals in this period (immediately before the opening of tenders) in a number of cases, certain economic operators do not have any real intention to obtain a review of allegedly unlawful proceedings by the contracting authority, but the question arises whether economic operators use the review proceedings for some other objectives in relation to the procurement procedures.

2.8. Analysis of Ex Officio Conduct - Application of the PPA 2016

Pursuant to the PPA 2016, the State Commission pays attention *ex officio* to the procedural requirements and particularly essential violations of the public procurement procedures, which are listed exhaustively in Article 404, paragraph 2 of the PPA 2016.

In 2020, the State Commission, acting *ex officio*, found the existence of particularly essential violations referred to in Article 404, paragraph 2 of the PPA 2016 in 17 decisions.

2.8.1. The Number of Decisions Finding a Particularly Essential Violation with regard to the Subject of the Appeal (Stages)

Subject of Appeal	2019	2020.
Procurement documentation	21	2
Amendment to procurement documentation	1	2
Award / annulment decision	53	13
Opening and omission	1	0
Other	0	0
TOTAL	76	17

The comparison between the number of decisions in which a particularly essential violation of public procurement procedures was found in 2020 (17 decisions) and the number of decisions in which a particularly essential violation of public procurement procedures was found in 2019 (76 decisions), shows that the total number of decisions in which a particularly essential violation was found in 2019 is significantly reduced. This is an indicator of increasing the expertise and level of knowledge of participants in public procurement procedures.

2.8.2. The Number and Structure of Particularly Essential Violations Found

The State Commission, acting *ex officio*, found particularly essential violations, as referred to in Article 404, paragraph 2 of the PPA 2016, in 17 decisions, whereby certain violations were found in several decisions. Also, in certain decisions, certain appellate allegations corresponded to the particularly essential violations found. The total number of particularly essential violations found is 19.

Particularly Essential Violation	2019	2020.
Short time limit for submission of tender applications	3	3
Correction of notice was not published	0	0
Time limit for submission of tender applications was not extended	2	1
Award criterion	0	0
Mandatory grounds for disqualification	44	10
Negotiations and amendment of tender	0	0
Criterion for award to economic entity	36	5
TOTAL	85	19

A comparison of the statistical data presented on the number of particularly essential violations found and statistics on the number of particularly essential violations found in the previous 2019 shows a decrease in the total number of these violations by 77,65%.

2.9. Annulment of Public Procurement Contracts or Framework Agreements

In 2020, the State Commission did not render any decision on annulment of the public procurement contract or framework agreement. No appeal was lodged against the amendment of the public procurement contract.

2.10. Decisions on Proposals for Issuing An Interim Measure

In 2020, 43 proposals for issuing an interim measure were received, with an average decision-making time of two days, which is a reduction in the average decision-making time by one day or 33.33% compared to 2019.

Proposals for Issuing Interim Measures		Number
Number of proposals decided in 2020, of which there were:		43
	Dismissed on merits	4
	Dismissed	12
	Proposals granted	16
Other (resolved in another way) *		11
TOTAL NUMBER OF PROPOSALS RECEIVED		43

* In certain appellate procedures decisions on the merits of the appeal were made, and so no separate decisions on accessory claims were made.

In 2020, 43 proposals to issue interim measures were submitted, or 7.50% more than in 2019.

In 2020, 12 proposals to issue interim measures were dismissed, and 4 were dismissed on merits. Proposals were granted in 16 appellate cases.

2.11. Decisions on Requests for Approval of the Continuation of Procedures and/or Conclusion of a Public Procurement Contract

In 2020, 29 requests were received for the continuation of procedures and/or conclusion of a public procurement contract, or a framework agreement, which were resolved in an average time of two days, which is a reduction of the average decision-making time compared to 2019 by two days or 50%.

Request to Grant Continuation of the Proceedings and/or Conclusion of a Public Procurement Contract		Number
The number of applications decided in 2020, of which were:		29
	Dismissed on merits	18

	Dismissed	-
	Granted requests	5
Other (resolved in some other way) *		6
TOTAL NUMBER OF APPLICATIONS RECEIVED		29

* In certain appellate procedures no decisions on the merits of the appeal were made, and so no separate decisions on accessory claims were made.

In 2020, 29 requests for approval of the continuation of the public procurement procedure were submitted, or 107% more requests compared to 2019.

Requests were dismissed on merits in 18 appellate cases and granted in 5.

2.12. Fines

Pursuant to Article 429 of the PPA 2016, the State Commission may, in cases prescribed by law, impose a fine on the contracting authority. In 2020, no fine was imposed pursuant to the provisions of that Article of the Act, since the requirements for the imposition of a fine, as prescribed by the law, were not met.

2.13. Oral Hearings

Pursuant to Article 427 of the PPA 2016, the parties to the appellate proceedings may propose the holding of an oral hearing before the State Commission, in order to clarify complex facts of the case or legal issues. In 2020, a request for an oral hearing was made in ten (10) appellate cases. None was granted and no oral hearing was held.

Holding an oral hearing would, in principle, prolong the review procedures, where the procedures conducted by the State Commission are subject to a time limit. By their legal nature, proceedings before the State Commission consist of a review of the lawfulness of documentation, which, given the explicit obligation to ensure the burden of proof, the party is obliged to provide. Given that the presentation of new facts and allegations of the appellant is limited by the legal deadlines for lodging an appeal, only in exceptional situations could an oral hearing clarify certain factual issues. For this reason, the holding of an oral hearing is replaced by a written communication with the parties, requesting the completion of the documentation.

Regardless of the above, an oral hearing, as an important element of adversarial procedures, is a procedural tool which the State commission intends to developed in a targeted manner, in specific appellate procedures.

2.14. The Length of Appellate Procedures

The length of the review proceedings is prescribed by Article 432, paragraph 2 of the PPA 2016, according to which the State Commission is obliged to render a decision within 30 days of the submission of an orderly appeal, and prepare and submit a written copy of the decision within eight days from the date of rendering the decision at a session of the panel.

Pursuant to the State Commission Act, the obligatory content of the Work Report is data on the average duration of the appeal procedure from the day of receipt of the appeal to the day of the decision, as well as from the date of completion of the documentation of the appellate case until the rendering of the decision. The first data speak of the time period the file spends at the State Commission, and the second of the active time required to render a decision on the main matter, since no decision on merits can be made in appeal procedure before the file is completed. Although this Act does not prescribe the obligation to disclose data on the average length of appellate procedures from the date the appeal is deemed orderly to the date of the decision, the PPA 2016 prescribes the obligation to render a decision within 30 days from the date the appeal is deemed orderly, which is why this information is given in this Report.

Length of Appellate Procedures	2019	2020.
Average time from the date of completion of appellate cases to the rendering of a decision, in days	16	13
Average time from receipt of the appeal to the rendering of the decision, in days	34	30
Average time from the date the appeal is deemed orderly to the rendering of the decision, in days	27	26

In 2020, the trend of shortening the decision-making period of the State Commission was maintained.

The time from the completion of the appeal case to the decision was 13 days, which is a reduction of 18.75%. At the same time, the average time from receiving the appeal to rendering a decision was shortened from 34 to 30 days.

Despite constant efforts to shorten the deadlines for resolving appellate cases, due to the contradictory nature of the appellate procedure, within which the State Commission is obliged to collect the statements of the parties to the appellate proceedings on the allegations of the opposing parties before proceeding with resolving the appellate case, The State Commission in certain cases is unable to make a decision in the appeal case within the statutory deadline due to the actions of appellants who use legal possibilities to maximize the phase of the appeal procedure in which relevant documentation and the parties' observations are collected (the so-called case completion phase).

Thus, for example, in 2020, 18 irregular appeals were lodged in which no appellate allegations were stated (description of irregularities and explanation) or evidence was attached, with all 18 appeals filed by the economic operator Ramić-trade d.o.o., Podstrana. Of the mentioned 18 appeals, eight of them were filed against the documentation on the procurement, of the total estimated value of HRK 125,572,249.31 (of which HRK 52,571,249.31 were urgent cases), while 10 appeals were filed against the award decision, with the total estimated value of HRK 26,830,190,00. The total estimated value of these 18 appeal cases is HRK 152,402,439.31.

The State Commission is obliged, if the appeal does not contain an appeal allegation (description of irregularities and explanation) and evidence, to warn the appellant and set a deadline of no more than five days, within which the appellant is obliged to eliminate shortcomings, with a warning of legal consequences if fails to do so within a certain time limit (Article 421, paragraphs 2 and 3 of the PPA 2016).

Calls for the elimination of the described shortcomings of the appeal result in the extension of the total duration of the appeal procedure before the State Commission, while the number of appeals with this shortcoming, which were lodged by one appellant in 2020, indicates possible abuse of this procedural institute.

Although the average duration of the appeal procedure, from the receipt of the appeal to the decision is 30 days, in the above appeal procedures this period was 64 days, which is 34 days or 113% more than the average deadline for resolving all appeal procedures.

These indicators show the need to intervene in the existing legislative framework to prevent such conduct by the appellants. This is elaborated in more detail in the chapter "Assessment of the situation in legal protection".

2.15. The List of Contracting Authorities with five or More Appellate Procedures

The following table shows the number of appellate cases in relation to the contracting authorities that had 5 or more appellate procedures before the State Commission in 2020. The table also shows the number, that is, the percentage of appeals granted in relation to the number of appeals received, as well as the total number of conducted procedures by contracting authorities in 2020.

No.	Contracting Authority	Total Number of Public Procurement Procedures published in EPPC 2020.	Number of Public Procurement Procedures in which an Appeal was Lodged	Number of Reviewed v. Number of Published Procedures	Appeals Received	Appeals Granted	Appeals Granted v. Appeals Received
1.	Hrvatski operator prijenosnog sustava d.o.o., Zagreb	206	21	10,19%	33	22	66,67%
2.	Opća bolnica Dr. Ivo Pedišić, Sisak	33	4	12,12%	8	7	87,50%
3.	Grad Zagreb, Zagreb	864	49	5,67%	71	28	39,44%

4.	Jadrolinija, Rijeka	76	5	6,58%	9	9	100,00%
5.	Opća bolnica Dr. Josip Benčević, Slavonski Brod	49	6	12,24%	8	1	12,50%
6.	Klinički bolnički centar Sestre milosrdnice, Zagreb	59	8	13,56%	11	7	63,64%
7.	Ministarstvo obrane, Zagreb	97	9	9,28%	13	5	38,46%
8.	HEP-Operator distribucijskog sustava d.o.o., Zagreb	342	45	13,16%	53	29	54,72%
9.	HŽ- Infrastruktura d.o.o., Zagreb	95	15	15,79%	26	12	46,15%
10.	HEP- Proizvodnja d.o.o., Zagreb	222	27	12,16%	39	17	43,59%

11.	Hrvatska akademska i istraživačka mreža- CARNet, Zagreb	31	3	9,68%	6	3	50,00%
12.	Hrvatske ceste d.o.o., Zagreb	183	16	8,74%	16	9	56,25%
13.	Vodopskrba i odvodnja Zaprešić d.o.o., Zaprešić	9	7	77,78%	8	6	75,00%
14.	Županijska bolnica Čakovec, Čakovec	33	4	12,12%	7	3	42,86%
15.	Ministarstvo gospodarstva, poduzetništva i obrta, Zagreb	9	6	66,67%	7	2	28,57%
16.	Klinička bolnica Dubrava, Zagreb	54	3	5,55%	5	3	60,00%
17.	Financijska agencija, Zagreb	135	9	6,67%	12	3	25,00%

18.	Klinika za dječje bolesti Zagreb	18	5	27,78%	9	3	33,33%
19.	Hrvatske šume d.o.o., Zagreb	78	12	15,38%	19	10	52,63%
20.	Hrvatske autoceste d.o.o., Zagreb	260	14	5,38%	17	9	52,94%
21.	Klinički bolnički centar Split, Split	144	7	4,86%	7	6	85,71%
22.	Hrvatska kontrola zračne plovidbe d.o.o., Velika Gorica	35	6	17,14%	7	5	71,43%
23.	Split parking d.o.o., Split	7	5	71,43%	6	2	33,33%
24.	Hrvatske vode, Zagreb	117	20	17,09%	33	23	69,70%

25.	Hrvatska elektroprivreda d.d., Zagreb	63	9	14,28%	12	6	50,00%
26.	Istarski domovi zdravlja, Pula	17	4	23,53%	5	1	20,00%
27.	Opća bolnica Zadar, Zadar	68	5	7,35%	8	5	62,50%
28.	Ministarstvo unutarnjih poslova, Zagreb	141	10	7,09%	11	4	36,36%
29.	HEP-Toplinarstvo d.o.o., Zagreb	57	6	10,53%	9	5	55,55%
30.	Hrvatska radiotelevizija, Zagreb	121	6	4,96%	7	3	42,86%
31.	Javna ustanova Nacionalni park Plitvička jezera, Plitvička Jezera	39	6	15,38%	8	4	50,00%

32.	Klinički bolnički centar Zagreb, Zagreb	222	9	4,05%	9	3	33,33%
33.	Vodne usluge d.o.o., Bjelovar	14	4	28,57%	5	3	60,00%
34.	HŽ-Putnički prijevoz d.o.o., Zagreb	27	3	11,11%	5	3	60,00%
35.	Ministarstvo zdravstva, Zagreb	21	4	19,05%	7	2	28,57%
36.	Splitsko- dalmatinska županija, Split	29	4	13,79%	7	4	57,14%
37.	Koprivničke vode d.o.o., Koprivnica	13	4	30,77%	5	3	60,00%
38.	Moslavina d.o.o., Kutina	5	3	60,00%	5	0	0,00%

39.	Klinički bolnički centar Osijek, Osijek	88	7	7,95%	11	6	54,54%
40.	Grad Slavonski Brod, Slavonski Brod	37	4	10,81%	5	2	40,00%
41.	Brodsko- posavska županija, Slavonski Brod	15	2	13,33%	5	3	60,00%
42.	HP-Hrvatska pošta d.d., Zagreb	113	5	4,42%	5	1	20,00%
43.	Međimurske vode d.o.o., Čakovec	25	3	12,00%	5	2	40,00%
44.	KD Vodovod i kanalizacija d.o.o., Rijeka	47	3	6,38%	10	3	30,00%
45.	Agencija za obalni linijski pomorski promet, Split	15	6	40,00%	8	2	25,00%

46.	Hrvatska Lutrija d.o.o., Zagreb	71	5	7,04%	5	0	0,00%
47.	Hrvatski zavod za zapošljavanje, Zagreb	35	5	14,28%	6	3	50,00%
48.	Hrvatski zavod za zdravstveno osiguranje, Zagreb	34	4	11,76%	6	4	66,67%
49.	Grad Delnice, Delnice	6	2	33,33%	5	2	40,00%
50.	Klinički bolnički centar Rijeka, Rijeka	152	5	3,29%	7	4	57,14%
51.	Grad Trogir, Trogir	7	3	42,86%	5	1	20,00%
52.	Osječko- baranjska županija, Osijek	18	3	16,67%	5	1	20,00%

53.	Ministarstvo gospodarstva i održivog razvoja, Zagreb	19	7	36,84%	8	3	37,50%
54.	Državna geodetska uprava, Zagreb	26	2	7,69%	6	4	66,67%

The number of appeals refers to public procurement procedures and concession award procedures, while the number of publications in the EPPC of the Republic of Croatia for 2020 refers only to public procurement.

The party to whose detriment the appellate proceedings has ended is obliged to reimburse the opposing party for the justified costs incurred by it in participating in the appellate proceedings (Article 431, paragraph 3 of the PPC 2016). This specifically means that in the case of acceptance of the appeal request, the Contracting authority is obliged to reimburse the appellant for eligible costs, as a rule, the cost of the fee for initiating the appeal procedure and the cost of legal representation.

Below is an overview of the Contracting authorities that paid the highest amount of costs of the appeal procedure in 2020. It is important to keep in mind here that these are the Contracting authorities that, as a rule, carry out the most public procurement procedures, so the risk of unintentional irregularities is higher. Also, since these are mostly large-value procurements, the fees for initiating an appeal procedure, i.e. the fees for the costs of an appeal procedure, are higher. In some public procurement procedures, Contracting authorities often have several appeals from different economic operators, so the costs of the appeal procedure, in the case of acceptance of the appeal, are multiplied.

No.	Contracting Authority	Total number of proceedings	Total value of proceedings	Total value of the proceedings that were reviewed	Total amount of costs paid
1.	Hrvatski operator prijenosnog sustava d.o.o., Zagreb	206	1,154,581,934.00	353,913.00	588,831.06
2.	Hrvatske vode Zagreb	117	519,846,102.40	246,070,735.40	543,248.93
3.	Grad Zagreb	864	5,121,192,371.28	352,689,483.64	519,905.50
4.	HEP – Operator distribucijskog sustava d.o.o., Zagreb	342	1,697,552,121.78	329,090,433.01	496,250.09
5.	HEP- Proizvodnja d.o.o., Zagreb	222	1,480,177,003.00	263,139,000.00	398,373.99

2.16. Appellants with 6 or More Appellate Procedures

In this statistical period, appellants and their success in appellate procedures were monitored. This type of data contributes to obtaining a broader picture of appellate procedures before the State Commission.

Number	Appellant	Number of Appeals Lodged in 2020	Appeal Granted	Appeal Dismissed on Merits	Appeal Dismissed	Termination
1.	Croatia osiguranje d.d., Zagreb	10	7	1	1	1

2.	Medical Intertrade d.o.o., Sveta Nedelja	6	4	2	0	0
3.	Elektrocentar Petek d.o.o., Ivanić-Grad	14	7	4	3	0
4.	Siemens Healthcare d.o.o., Zagreb	20	12	7	0	1
5.	HOK osiguranje d.d., Zagreb	10	7	2	1	0
6.	Shimadzu d.o.o., Zagreb	13	6	5	1	1
7.	Dalekovod d.d., Zagreb	7	5	2	0	0
8.	Proklima-tim d.o.o., Zagreb	10	8	2	0	0
9.	SGM Informatika d.o.o., Split	8	5	2	0	1
10.	Trames d.o.o., Dubrovnik	6	1	3	2	0
11.	Ramić-Trade d.o.o., Podstrana	21	14	5	1	1
12.	Ingpro d.o.o., Zagreb	6	3	3	0	0

13.	Eko-flor plus d.o.o., Oroslavje	7	3	3	1	0
14.	Express Consulting Engineering d.o.o., Bakar	6	0	0	6	0
15.	Projekt jednako razvoj d.o.o., Zagreb	8	6	2	0	0
16.	Slavonija bus d.o.o., Novi Grad	8	2	5	1	0

**The table shows the appellants with six or more resolved appeals, who lodged their appeals independently or as members of bidder consortiums.*

2.17. The Most Frequent Reasons for Lodging an Appeal and the most Frequent Irregularities Identified by the State Commission

The most frequent reasons for filing an appeal and irregularities identified by the State Commission are largely repeated from year to year.

In appellate procedures conducted before the State Commission, the following most common reasons for filing an appeal can be singled out:

- non-compliance of procurement documentation with legislation in force (mostly in the part related to the description of the subject of procurement, technical specifications, criteria for qualitative selection of the economic entity and award criteria)
- omissions of the contracting authority during the examination and evaluation of tenders
- non-compliance of the selected bidder's tender with the conditions and requirements from the procurement documentation
- incorrect application of the provisions on supplementation, clarification/explanation, completion of tenders and submission of the necessary information or documentation
- violation of the principles of public procurement
- unlawfulness of the decision to annul the public procurement procedures

The Most Frequent Irregularities Found by the State Commission

For the purposes of this report, the most frequent irregularities found by the State Commission will be divided into those committed by bidders (2.17.1. Specific Bidder errors) and those committed by the Contracting Authority (2.17.2. Specific Contracting Authority Errors).

2.17.1. Specific Bidder Errors:

- submission of a tender that is not drawn up in accordance with the conditions and requirements from the procurement documentation (mostly in terms of proving the absence of grounds for disqualification, proving the criteria for qualitative selection of economic operator, proving compliance with the prescribed technical specifications of the procurement subject and errors in costing)
- supplementing and clarifying the tender contrary to statutory restrictions (negotiating and amending the tender)

2.17.2. Specific Contracting Authority Errors:

- unclear, dubious and contradictory procurement documentation;
- prescribing technical specifications in a way that unjustifiably restricts competition
- describing the subject of procurement, i.e. prescribing technical specifications, in a way that gives advantage to a certain economic entity;
- prescribing criteria for the selection of an economic operator that exceed the minimum levels of competence;
- incorrect determination of the criteria for selection of the tender (criterion of the most economically advantageous tender);
- deviation from the conditions and requirements in the procurement documentation during the examination and evaluation of tenders;
- deviation from the conditions and requirements from the procurement documentation during the examination and evaluation of tenders;
- acceptance of insufficient evidence proving the absence of grounds for disqualification;
- incorrect application of the provisions on supplementing and clarifying the bid (negotiation, violation of the principles of equality of arms and transparency, modification of the offer);

- non-transparency of examination and evaluation of tenders (lack of reasoning or faulty reasoning for non-fulfilment of criteria for selection of economic operator, i.e. reasons for rejection of tenders in the minutes on examination and evaluation of tenders, etc.)

2.17.3. The Most Frequent Appeal Allegations

The largest number of appeals is lodged in the procurement documentation phase and in the award decision phase. In view of this, the following is a presentation of the most frequent appellate allegations in these two stages of the procedures.

2.17.3.1. The Most Frequent Appellate Allegations Relating to Procurement Documentation

The most frequent reasons for contesting procurement documentation given in appeals lodged are:

- unclear, dubious and contradictory procurement documentation;
- incorrect criteria for dividing procurement items into lots;
- description of the subject of procurement and technical specifications, in the context of favouring a specific economic operator or restrictions on competition ie, creation of unjustified barriers to competition;
- technical specifications formulated contrary to statutory provisions (in terms of reference to a specific brand, equivalence, criteria for assessing equivalence);
- evidence of compliance with the requirements, or criteria set out in the technical specifications;
- prescribed conditions, and evidence of technical and professional capacity;
- prescribed criteria for selection of the tender (criterion of the most economically advantageous tender);
- prescribed conditions and requirements that must be met in accordance with special regulations or professional rules.

2.17.3.2. The Most Frequent Appellate Allegations Relating to Award Decision

The most frequent reasons for contesting award decisions given in lodged appeals are:

- (non) compliance with the technical specifications of the subject of procurement;

- (non) compliance with the requirements of technical and professional capacity;
- application of Articles 263 and 293 of the PPA 2016 (concept of supplementation and clarification/explanation of the tender);
- application of the provisions on the reliance of the economic operator on the capacity of other entities;
- examination and evaluation of tenders in relation to the award criteria (criterion of the most economically advantageous tender) - irregularity of scoring;
- application of the extremely low tender concept;
- proving the (non) existence of grounds for disqualification.

2.18. The Number of Motions to Indict filed

The State Commission Act, in Article 3, paragraph 4, defines the competence of the State Commission for filing motions to indict for misdemeanours prescribed by that Act, and other laws and regulations governing the field of public procurement. During 2020, the State Commission filed one motion to indict for misdemeanours.

2.19. Total Fees Paid for Initiating Appellate Procedures

Under Article 430 of the PPA 2016, the appellant in procedures before the State Commission pays a fee for initiating the appellate procedures in the amount of:

Amount of Fee	For the Estimated Value of Procurement
HRK 5,000.00	to HRK 750,000.00
HRK 10,000.00	from HRK 750,000.01 to HRK 1,500,000.00
HRK 25,000.00	from HRK 1,500,000.01 to HRK 7,500,000.00
HRK 45,000.00	from HRK 7,500,000.01 to HRK 25,000,000.00
HRK 70,000.00	from HRK 25,000,000.01 to HRK 60,000,000.00
HRK 100,000.00	over HRK 60,000,000.00

Exceptionally, for an appeal against the procurement documentation, the appellant is obliged to pay a fee for initiating appellate procedures in the amount of HRK 5,000.00, regardless of the estimated value.

Revenues from fees for initiating appellate procedures are paid into the state budget. In 2020, a total of HRK 16,016,391.52 was paid into the state budget on the basis of the fee for initiating appellate procedures, which is about 50% more than the budget of the State Commission for 2020.

Budget revenues on this basis are declining compared to 2019 due to a decrease in the number of appeals compared to the previous year.

2.19.1. Revenues from the Administrative Fee for Initiating Appellate Procedures before the State Commission

Pursuant to Article 430 paragraph 8 PPA 2016, appellants are no longer obliged to pay administrative fees when lodging an appeal.

2.20. Other Relevant Indicators in Appellate Cases

Among the other relevant indicators in appellate cases in 2020, it is necessary to point out the effects of the application of the e-Appeals system, and the features of appellate cases of public procurement financed from EU funds and strategic investments, as well as the structure of such procedures.

2.20.1. Lodging an Appeal Electronically in Public Procurement

By introducing the possibility of lodging appeals by electronic means of communication, through the interconnected information systems of the State Commission and the EPPC of the Republic of Croatia (e-Appeal system), the requirements were met for improving the efficiency and shortening the length of appellate procedures.

This implies that in procedures in which an electronic appeal is lodged, communication with the parties is performed by electronic means of communication, which significantly speeds up procedural actions, and speeds up appellate procedures.

In the third year of the possibility of lodging an e-appeal, there was an increase in appeals filed through interconnected information systems of the State Commission and the Electronic Public Procurement Notice of the Republic of Croatia (e-Appeal system). Of the total number of appeals, 54.27% were lodged through the e-Appeal system, which is an increase of 8% compared to the previous year.

The advantages of the e-Appeal system are primarily the reduction of the decision-making period of the State Commission, so the deadline from receiving the appeal to rendering a decision in the proceedings in which the e-Appeal was lodged, was shortened by 5 days. This is an extremely significant reduction, considering that the State Commission has to render its decision in a very short period of time.

Furthermore, the importance of e-Appeals became even more emphasized in 2020, which was marked by the COVID-19 pandemic. Namely, the possibility of lodging an appeal digitally in the form of an e-Appeal, enabled the exercise of the right to appeal without the need to come directly to the State Commission or to an authorized postal service provider. This was especially important in situations where most businesses resorted to so called work from home or work at a separate place of work. In addition, an additional advantage of the e-Appeal system is the achievement of additional savings, not only for the State Commission, but also for the parties to the appeal procedure, since all further communication of the State Commission with the parties these cases takes place through the e-Appeals module of the EPPC of the RC.

The e-Appeals system has significantly eased the daily work of the State Commission in working conditions in a separate workplace and in separate teams, as a consequence of the COVID-19 pandemic. Namely, in proceedings in which the appeal is lodged in the form of an e-Appeal, all submissions in the appeal procedure are submitted through the EPPC of the RC and thus the entire file of the appeal procedure (appeal, conclusions of the State Commission and statements of the parties with all attachments) is in within the e-Appeal module in the EPPC of the RC. Therefore, the employees of the State Commission that ar in charge of specific case, can access them remotely at any time through the EPPC of the RC, and this option greatly contributed to efficiency of the State Commission during the pandemic time. Thanks to the e-

Appeal system and thanks to dedicated work of employees of the State Commission, and despite extremely difficult working conditions during 2020, the State Commission managed not only to maintain the existing deadlines in appeal proceedings but also to shorten them, while at the same time maintaining the quality of decisions, what is clearly visible through the declining number of State Commission decisions that have been annulled by the High Administrative Court.

The e-Appeal system additionally enables automatic downloading of data related to the public procurement proceeding, the parties and regarding appeal allegations, into the internal application of the State Commission in workable form. All of this enables further work on the received appeal almost without paper. This contributes to the efficiency of the State Commission's work and the reduction of the administrative burden of State Commission's employees who are in charge of work on a particular case, and facilitates and accelerates the process of rendering the decisions.

2.20.1.1. The Number of e-Appeals Received in 2020

Type of Procedures	Total Number of Appeals Received	Number of e-Appeals Received	%
Public procurement	1066	591	55,44
Concessions	23	-	-
Public-private partnership	-	-	-
Total	1089	591	54,27

Overview of the growth trend of Appelas through the e-Appelas system from 1 January 2018 to the end of 2020.



The presentation of Appeals over the previous years shows a constant increase in the number of Appeals that are lodged as e-Appeal.

2.20.1.2. The Length of Appellate Procedures Initiated by an e-Appeal

Period	e-Appeal (Number of Days)	All Procedures (Number of Days)
Average time from the date of completion of appellate cases to the rendering of a decision	13	13
Average time from receipt of the appeal to the rendering of a decision	25	30
Average time from the date the appeal is deemed orderly to the rendering of a decision	23	26

The table shows that the average length of appellate procedures, in cases where an e-Appeal was received, is shorter for 5 days than the average length of appellate procedures in all cases received in 2020, especially in relation to the length of the procedures from receiving the appeal to the decision.

Although modest at first, it can be concluded that over the years the expected effect of filing an e-Appeal against the total length of the appellate procedures, was achieved. In this context, it is necessary to make more effort in this field and provide the additional conditions necessary for

faster and more efficient resolution of appellate procedures. This primarily relates to the improvement of the existing technical conditions that would make possible faster and easier functioning of the e-Appeal system.

2.20.1.3. The Structure of Decisions in Cases in which an e-Appeal was Received

For the purposes of this Report, 549 cases are analyzed that were received and resolved in 2020, and data on cases transferred to 2021 (42 of them) are not reported.

Of the total 549 electronic appeals received and resolved, 93 resulted in dismissal.

Type of Decision	Number	%
Appeal granted	246	44,81
Appeal dismissed on merits	181	32,97
Appeal dismissed	93	16,94
Termination of the procedures	29	5,28
TOTAL	549	100

The above data show that the structure of decisions in cases in which an appeal was filed in the form of an e-Appeal does not deviate significantly from the structure of the decision in other cases.

2.20.2. The Characteristics of Public Procurement Cases Financed from EU funds

	Number of Procedures Published in 2019. (Classifieds)	Number of Proceedings in Which Appeal was Lodged in 2020.	%
All procedures	11289	816	7,23

Procedures financed from EU funds	1436	233	16,23
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The total number of public procurement procedures which were first announced in 2020, was 11,289. Of this number, 1,436 public procurement procedures were financed from European Union funds. The State Commission reviewed 233 procedures financed from European Union funds (16.23%) during the 2020.

In 2020, there was an increase in the number of public procurement procedures financed from European Union funds, which were the subject of an appeal procedure before the State Commission.

Therefore, given the total number of reviewed procedures in relation to the total number of published procedures financed from EU funds, it is clear that the number of procedures that were the subject of challenge before the State Commission was insignificant. Thus, in 2019, 11.91% of these procedures were reviewed, while in 2020, 16.23% were reviewed. In general, the actions of the State Commission in all appeal proceedings are aimed at preventing illegality, while in appeal proceedings that control public procurement procedures co-financed from EU funds, in addition to the above actions of the State Commission, have added value - preventing the imposition of financial corrections, which further protects the budget.

2.20.2.1. The Length of Public Procurement Cases Financed from EU Funds

Period	EU Funds (Number of days)	All Procedures (Number of days)
Average time from the date of completion of appellate cases to the rendering of a decision	11	13
Average time from receipt of the appeal to the rendering of a decision	25	30

Average time from the date the appeal is deemed orderly to the rendering of a decision	23	26
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Regarding the average length of procedures in appellate cases financed from European Union funds, it should be noted that in 2020 the average time from receiving an appeal to rendering a decision was shortened by 6 days since the same average time in 2019 was 31 day.

It should be noted here that the speed of resolving cases, no matter how important, especially in proceedings financed from EU funds must not lead to a reduction in the quality of decisions of the State Commission, so it is important to point out that during 2020 the number of decisions of the State Commission, that were annulled by the High Administrative Court, was significantly reduced.

It should be pointed that the data in the table above, refer to all the urgent cases conducted before the State Commission.

Urgent cases are appellate procedures conducted in accordance with the legislation governing the field of public procurement and concessions, and are related to the implementation of strategic projects; appellate public procurement procedures related to projects financed in whole or in part by European Union funds, and appellate public procurement procedures in the field of defence and security. Appellate procedures, which are fully or partially financed by the European Union, account for the largest proportion of urgent cases, and shortening the time limit for resolving these cases contributes to the total shortening of the length of public procurement procedures, which is important since contracting in such procedures is subject to short time limits.

2.20.2.2. The Structure of Appellate Cases Financed from EU funds

In 2020, the State Commission received a total of 1089 appeals, of which 309 appeals related to public procurement procedures financed from European Union funds.

For the purposes of this Report, the cases received and resolved in 2020 are analyzed, which were financed from European Union funds, i.e. 285 of them.

Type of Decision	Number	%
Appeal granted	114	40,00
Appeal dismissed on merits	116	40,70
Appeal dismissed	42	14,74
Termination of procedures	13	4,56
TOTAL	285	100

Acting on Appeals regarding the public procurement procedures that are financed from EU funds, the State Commission dismissed on merits the Appeals in 116 Appeal cases, which represents 40.70% of the total number of appeals filed in these proceedings. This represents an increase compared to 2019 when 80 of them were dismissed on merits, i.e. 25.56% of the total number of appeals filed in these proceedings. An increase in the number of Appeals that were dismissed on merits, results in faster conclusion of public procurement contracts, which is especially important in those procedures where contracting within certain deadlines is a precondition for withdrawing funds. An increase in the number of Appeals dismissed on merits may also indicate an increased level of expertise among the people conducting procurement procedures in these cases.

2.20.2.3. Annulment Structure (the Decisions, Procedures and Actions of Contracting Authorities Affected by Unlawfulness)

Subject of Annulment	Number	%
Procurement documentation	21	18,42
Award decision	87	76,32
Annulment decision	6	5,26

Procedures	0	0
TOTAL	114	100

The State Commission mostly annuls the award decision (76.32%), or annuls the part of the procurement documentation affected by unlawfulness, while in no case did it annul the entire public procurement procedure. It is clear from these data that a decision by the State Commission granting an appeal does not require the conduct of the entire public procurement procedures from the beginning again, but their effect is to remand the case to the contracting authority to correct the unlawfulness identified in the phase of examination and evaluation of the tenders (if it is a matter of annulment of award decision), or changes to the unlawful part of the procurement documentation and continuation of the procedures (if it is a matter of annulment of part of the procurement documentation).

The fact that the State Commission did not annul the entire procurement procedure in any appeal procedure, which would require conducting the procurement procedure from the beginning, is extremely important in order to shorten the overall duration of procurement procedures financed from EU funds, given that in these procurement procedures withdrawal of funds from the European Union is related to contracting within certain deadlines.

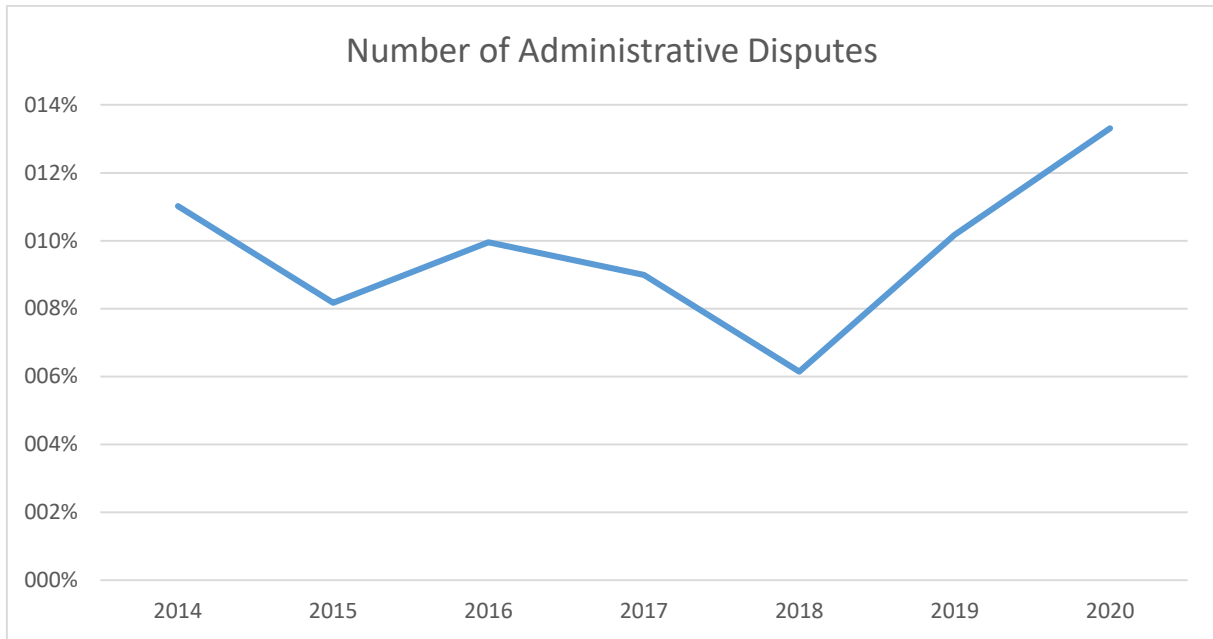
3. ADMINISTRATIVE DISPUTES AGAINST DECISIONS BY THE STATE COMMISSION

In 2017, the High Administrative Court, pursuant to Article 434, paragraph 1 of the PPA 2016, was granted jurisdiction to decide in the first instance in administrative disputes against decisions by the State Commission.

The tables and graphs below provide an overview of the number of administrative disputes and the types of decisions rendered in administrative disputes.

3.1. The Number of Administrative Disputes against Decisions by the State Commission

Year	Number of Appeals	Number of Administrative Disputes	%
2020	1089	145	13,31
2019	1209	123	10.17
2018	1170	72	6.15
2017	945	85	8.99
2016	1135	113	9.95
2015	1137	93	8.17
2014	1315	145	11.02



In 2020, the number of administrative disputes continued to show increasing trend, which is a consequence of the fact that the High Administrative Court took over the competence to decide on lawsuits against decisions of the State Commission and also of possible perceptions that there is an increased court efficiency in making decisions. The low number of administrative disputes in 2018 is a possible consequence of the delay in legal protection before the High Administrative Court, which lasted from the adoption of the PPC 2016 to February 5, 2019. After 2018, there is a clear trend of continuous increase in the percentage of decisions of the State Commission challenged before the High Administrative Court, which may further indicate an increase in confidence of procurement participants regarding the quick and efficient exercise of legal protection before the administrative court. In 2019, that is, until the legal protection before the High Administrative Court became operational, disputes against the decisions of the State Commission lasted for several years.

3.2. The Number and Structure of Decisions in Administrative Disputes in 2020

The structure of decisions of the High Administrative Court in relation to the decisions of the State Commission from 2020 is given below.

Decisions by the High Administrative Court		
Type of Decision	Number	%
Action dismissed on merits	116	80,00
Action dismissed	10	6,90
Termination of administrative dispute	3	2,07
Action granted, State Commission's decision annulled and the court rendered its own decision in the administrative matter	16	11,03
Action granted, State Commission's decision annulled and the case remanded to the State Commission	-	-
TOTAL	145	100

The data show that in 2020 an extremely small number of decisions of the State Commission, which were the subject of the dispute before the High Administrative Court, were annulled, i.e. a large number of decisions of the State Commission, which were the subject of the dispute, were confirmed by decisions in a form of dismissal on merits, dismissal termination of the administrative dispute (88.97%). If we take into account the total number of decisions made by the State Commission during 2020, it should be noted that of this total number, an extremely small share of decisions was annulled by the High Administrative Court (1.47%).

Below is a comparative overview of data on administrative disputes in 2020 with data on administrative disputes in 2019. This comparative overview differs from the data given in the Annual Report of the State Commission for 2019, as the Annual Report presents data related to all decisions received in 2019, which relate to the decisions of the State Commission from different years (therefore, data on all decisions received in the period from 1 January 2019 to 31 December 2019).

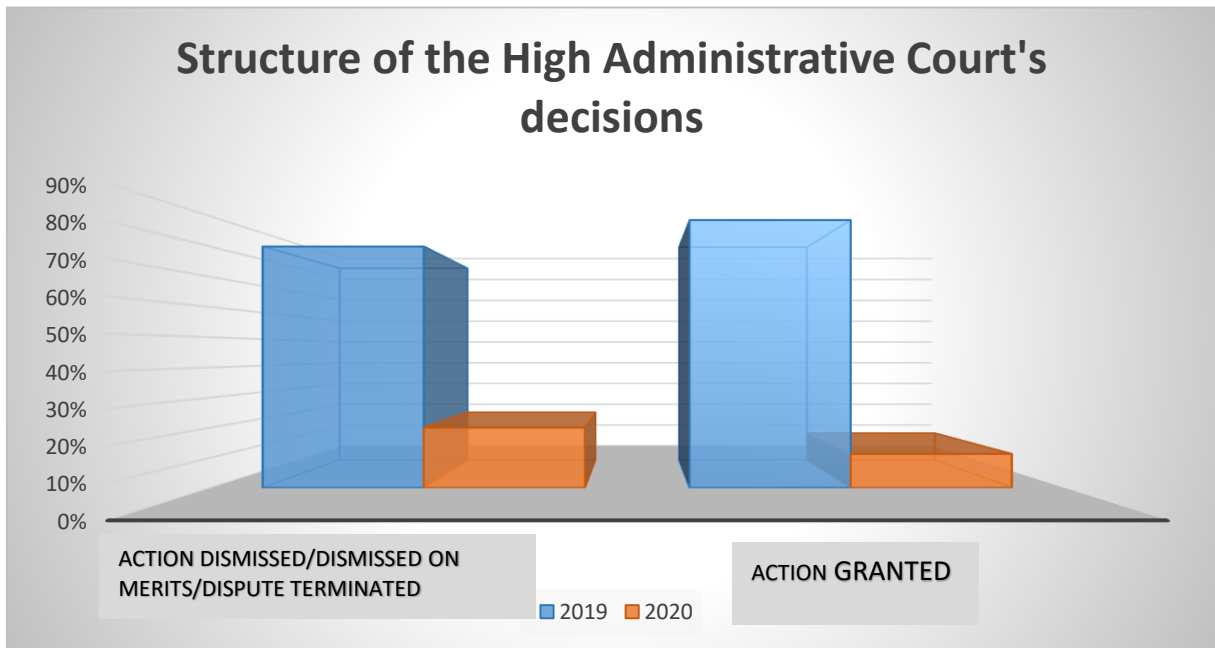
The above-mentioned data were also presented in previous Annual reports of the State Commission, since administrative disputes in the first instance according to the PPA 2016 lasted for several years before the High Administrative Court took over the competence over those disputes.

Since the High Administrative Court now resolves cases in a much shorter time, it is possible to present data in connection to the year of the State Commission's decision. Also, since several decisions of the High Administrative Court were made in some cases of the State Commission, due to, for example, annulment of the decision of the High Administrative Court, the data show only the first decision of the High Administrative Court in each case.

Decisions of the High Administrative Court - comparative view				
	2019		2020	
Type of Decision	Number	%	Number	%
Action dismissed on merits	90	72,00	116	80,00
Action dismissed	7	5,6	10	6,90
Termination of administrative dispute	3	2,4	3	2,07
Action granted, State Commission's decision annulled and the court renders its own decision in the administrative matter	19	15,2	16	11,03
Action granted, State Commission's decision annulled and	6	4,8	-	-

the case remanded to State Commission				
TOTAL	125	100	145	100

The data show a significant decrease in the number of decisions of the State Commission annulled by the High Administrative Court in 2020 compared to 2019, i.e. an increase in the number of decisions of the State Commission confirmed by decisions regarding actions dismissed on merits, action dismissed, and terminating the administrative dispute (88.97%).



4. ASSESSMENT OF THE SITUATION IN REVIEW PROCEDURES AND PUBLIC PROCUREMENT IN GENERAL

In accordance with the State Commission Act, the obligatory content of the report on the work of the State Commission is both the assessment of the situation in legal protection and the assessment of the situation in public procurement. In this way, the State Commission has the authority, but also the responsibility on the basis of data available in the appeal procedure, to point out certain phenomena, regularities and trends that have been observed, and use them to point out existing problems in practice, but also use this data as a basis for proposing the improvements of the normative framework and practice in procurement procedures in order to further improve the existing public procurement system and legal framework.

In the report for 2019, the State Commission gave its assessment of the situation in public procurement and legal protection, and certain parts of the assessment presented at that time are repeated in this report, given that these are trends that have continued to a greater or lesser extent during 2020.

4.1. Assessment of the Situation in Public Procurement in General

As pointed out several times in this report, the public procurement system and the legal protection system in 2020 were exposed to unexpected challenges related to the COVID 19 pandemic, but also to the consequences of devastating earthquakes that hit the Republic of Croatia. For these reasons, it is important to note that the entire report of the State Commission for 2020, including the part related to the assessment of the state of public procurement, should be viewed especially in the context of these extraordinary circumstances.

As in previous years, the public procurement system is stable, developing and adapting in accordance with the economic environment in the Republic of Croatia, which is supported by the fact that after the European Commission published the Single Market Scoreboard 2019 in September 2019 (when the Republic of Croatia was marked as "green" in the field of public procurement for the first time since joining the European Union), this same trend clearly continued in the European Commission's assessments for 2020. The above assessments show that in 2020, as in 2019, the analysis of several indicators related to public procurement procedures assessed that the state of public procurement in the Republic of Croatia is satisfactory, which is the best of the three possible assessment grades of the situation. Thus, the Republic of Croatia ranked among the small number of countries rated as "green" according to the above criteria.

After your years of application of the PPA 2016, certain positive effects are visible, as well as certain shortcomings of the legislative framework of the public procurement system. By publishing its decisions, the State Commission creates a public perception of the state of public procurement, so in order to objectively review the state of public procurement, it is necessary to keep in mind that the share of public procurement procedures controlled by the State Commission in 2020 was 7.23% of the total number of public procurement procedures published in the EPPC of the RC, so the conclusions expressed in the assessment of the situation in this report are based solely on assessment of the procedures that were subject to review before the State Commission.

Public procurement procedures in a narrower sense, which in accordance with the provisions of the PPA 2016 begins with the publication of an invitation for tenders in the EPPC of the RC, and ends with the enforceability of an award decision or an annulment decision, is only one part of the public procurement process in a broader sense, which begins with public procurement planning and ends with monitoring of the execution of contract/framework agreement.

According to the opinion of the State Commission, the public procurement system should be viewed as a whole, and in this assessment of the situation we consider it necessary to emphasize the need for its further development and in that sense, certain areas are listed below in relation to which, on the basis of procedures conducted upon appeals before the State Commission, it was assessed that there was a need to pay special attention to them.

These are the following areas:

- strategic approach to the development of the procurement system in the Republic of Croatia;
- strengthening the Central State Administration Body responsible for public procurement policy.

4.1.1. Strategic approach to the development of the procurement system in the Republic of Croatia

The development and maintenance of an once-established efficient, transparent and efficient public procurement system is an ongoing task. The introductory data provided by the Single Market Scoreboard make public procurement stakeholders responsible for making additional efforts to keep the established procurement system up to date with new public procurement policies and guidelines as well with the related tools that are being developed within the

European Union. Achieving these goal requires constant engagement, strategic thinking on further development and improvement of the public procurement system in the Republic of Croatia, and coordinated action of all stakeholders in achieving the set goals.

As already mentioned, the focus and public perception related to public procurement is concentrated in that part of the procurement procedure which is subject to control before the State Commission, while it is often neglected that the public procurement process in a broader sense begins with procurement planning, which includes, among other things, market research, definition of technical specifications, the bidder capacity requirements, etc., and ends with the execution of the public procurement contract.

Public procurement planning is a very important and relatively neglected part of the public procurement process, and it largely ensures the realization of the principle of "best value for money" in the later stages of the process. It is often clear from the results of the appellate procedures that the contracting authority did not conduct quality market research, and this results in deficiencies in the technical specifications, contract execution conditions, and an unclear definition of the procurement documentation, which may result in a final procurement, for which it is questionable whether it meets the contracting authority's needs, and whether it represents the best value for money. Adequate planning of the procurement process, and quality and timely market research reduce the need for frequent changes in procurement documentation after the start of the procurement procedures, and thus reduce the number of potential appeals that stop procedures, which further reduces the total time required to conduct the procurement procedures and contracting. This is particularly important in European-funded procurement procedures where contracting within a certain time frame is a precondition for withdrawing funds.

Timely, systematic and quality planning of the public procurement process should lead to the realization of the principle of best value for money in the long run, i.e. it enables the implementation of certain development policy measures through the achievement of secondary public procurement objectives, such as elements of sustainable, social and green procurement, innovative procurement, etc.

In order to ensure the systematic implementation of these goals, according to opinion of the State Commission, it would undoubtedly be useful to consider taking a strategic approach to further development of public procurement in the Republic of Croatia through the adoption of

a single Public Procurement Development Strategy. Also to consider measures for further digital transformation of the entire procurement process, measures for development, modernization and differentiation of the system of training and advanced training of public procurement professionals, in order to adequately professionalize contracting authorities to reduce errors and irregularities in public procurement procedures and financial corrections in procedures financed by European funds. In addition to the above, it is necessary to adopt a strategic approach to the development and promotion of sustainable procurement measures, green procurement, socially responsible procurement and the strategic use of innovative public procurement as a tool for modernizing the public sector in order to accelerate economic recovery. It would be appropriate to ensure the systematic and consistent implementation of these policies within the strategic document that would define further steps in the development of public procurement in the Republic of Croatia, which would ensure coordinated and systematic action of all stakeholders within the system towards achieving the set goals.

4.1.2. Strengthening the Central State Administration Body responsible for Public Procurement Policy

As already pointed out in previous reports by the State Commission, the Central State Administration Body responsible for Public Procurement Policy (now the Directorate for Trade and Public Procurement Policy of the Ministry of the Economy and Sustainable Development) plays a key role in designing the further development of the public procurement system and thus in the development of any strategic documents in this area.

During 2020, due to the merger of the two ministries, the former Directorate for Public Policy became the Sector for Public Procurement Policy and the projected number of workers was reduced. Considering the stated view of the State Commission on the need for further intensive work on the development of the public procurement system, it should be pointed out that there is need to strengthen the capacity of the Public Procurement Policy Sector and find ways to attract adequate professionals to these positions to provide professional support to all stakeholders in the public procurement system and a sufficient level of expertise and capacity for the timely implementation of a large number of tasks covered by the competence of organizational units within the Ministry of Economy and Sustainable Development in charge of public procurement policy.

In addition to the development of the system, the Public Procurement Policy Directorate must take two other important aspects of its competence into account, namely: administrative supervision of public procurement procedures, and the system of training of all participants in public procurement process.

4.1.2.1. Administrative control

Given that the State Commission reviews public procurement procedures only upon appeal (in only 7.23% of procedures conducted), the role of administrative oversight conducted by the Sector for Public Procurement Policy becomes crucial to ensure lawfulness (in the form of preventive measures, but also as a corrective factor) in public procurement procedures that were not subject to review by the State Commission.

Public procurement procedures, namely public procurement in a narrower sense (starting with the call for tenders and ending with the enforceability of the award decision), are subject to the greatest public scrutiny and the highest degree of control and transparency, through the possibility of appealing to the State Commission at all stages of the procedures with a suspensive effect in the form of stopping the procurement procedures. On the other hand, the execution of public procurement contracts themselves remains out of focus, and amendments to public procurement contracts outside the framework set by legal provisions represent a grey area that currently manages to go unnoticed in the public procurement system.

Although the possibility of challenging changes to a contract before the State Commission exists, such appeals are extremely rare, and in 2019 only one appeal was filed that aimed at annulling changes to the contract.

In this sense, there is a clear need urgently to build the administrative capacity of the Public Procurement Policy Directorate, which, in addition to the power to initiate misdemeanour proceedings, also has the power to lodge appeals before the State Commission in the public interest.

4.1.2.2. Education and certification system

Furthermore, the system of training and certification of participants in public procurement procedures is one of the most respected and better quality systems in EU Member States, and is mentioned in many European Commission documents as an example of good practice from the aspect of Contracting authorities, but at the same time it is necessary to point out the need to upgrade the system, to build and improve the professional capacity and knowledge of experts

in the preparation and implementation of procurement procedures, as well as to align the existing certification system with the latest tools developed within the European Union (eg ProcurCompEU - the European competency framework for public procurement professionals).

The stated need to strengthen the Sector for Public Procurement Policy in the part related to the education of system participants, arises from the above data in this Report, which show that contracting authorities conducting a small number of public procurement procedures face difficulties in implementing the PPA 2016, and a large number of errors are found in the procedures they conduct that could, in the opinion of that state body, be prevented by administrative supervision and training.

This is particularly important in procedures financed by European Union funds, given that the contracting authority's errors in such procedures result in significant financial corrections, thus multiplying the negative financial impact on the budget. Furthermore, for the sake of a uniform interpretation of legal provisions, it is once again emphasized that there is need for continued horizontal cooperation of all bodies that perform a certain role in review of the lawfulness of public procurement procedures related to the allocation of EU funds, for the purpose of the uniform interpretation of legal provisions, taking into account that such cooperation should not jeopardize the independence of those bodies in carrying out their tasks.

4.2. Assessment of the Situation Regarding Review

During 2020, in the circumstances of the pandemic, and thanks to the exceptional efforts of employees of the State Commission, but also due to the high degree of digitalization of procurement procedures, the appeal procedure and internal processes within the State Commission, the legal protection system functioned without significant problems.

The data presented above show that after a two-year increase in the number of Appeals (during 2018 and 2019), there is a trend of a decrease in the number of Appeals compared to the previous year by 9.92%. It should be further noted that this is an absolute reduction in the number of Appeals, but a relative increase in the percentage of procurement procedures that were subject to control by the State Commission in 2020 compared to 2019, given the fact that there was reduced total number of public procurement procedures published in the EPPC of the RC in 2020.

In relation to the content of the appeals, it should be noted that it is still observed a visible progress in the quality of appeals, with a very large number of appellate allegations and many

pieces of evidence attached, supporting those allegations (opinions of experts in certain areas, technical documentation, references to judgments by the European Court of Justice, and the like.).

In the further part of this Report, four aspects that represent the basis for assessment of the situation in review during 2020, will be elaborated in particular:

- the increase in the number of e-appeals lodged;
- appeals against procurement documentation;
- lodging the Appeals without allegations;
- administrative court protection.

4.2.1. The Increase in the Number of e-Appeals Lodged

As already indicated in previous reports of the State Commission, from 1 January 2018, the possibility to lodge an appeal through the interconnected information systems of the State Commission and the EPPC of the RC (e-Appeal system) was introduced for the State Commission. Since the introduction of the e- Appeal, a number of advantages of this way of filing an Appeal have been noticed, which are set out in more detail in the part of the report under items 2.20.1., 2.20.1.2., and 2.20.2. In appellate procedures initiated in this way, further communication takes place through the EPPC of the RC, which lifts significant administrative burden from appellate procedures, and simplifies and speeds up the service of documents. In addition, during 2020, in the circumstances of the pandemic, when additional emphasis was placed on the possibility of uninterrupted work without the need for physical presence in the office, the e-Appeal module within the EPPC of the RC proved to be an excellent tool, through which in situations when the appeal is filed in the form of an e-Appeal, the entire appeal file can be accessed through the EPPC of the RC, which creates preconditions for timely resolution of appeal cases.

The three years of application of this option show a visible trend of an increasing number of appeals lodged in the form of e-appeals. Thus, in 2018 the percentage of appeals lodged in the form of e-appeals amounted to 28.71%, while in 2019 this percentage rose to 47.15%, while in 2020 the share of e-Appeals was 54.27%. In this period, the shortening is also visible of the average length of time needed for resolving appellate cases in procedures in which appeals were lodged in the form of an e-appeal, in relation to other procedures.

Consequently, given the perceived advantages and the fact that the number of lodged e-appeals is on the rise, we believe that the introduction of e-Appeal as a mandatory way of lodging an Appeal, is a necessary prerequisite for further development of digitalization of the State Commission, for increasing its efficiency, for optimizing the time needed to make decisions in appeals and for reducing potential procedural abuses in appeal procedures. The introduction of a mandatory e-Appeal, in the view of the State Commission, would be a new step towards the complete digital transformation of the appeal procedure.

4.2.2. Appeals against Procurement Documentation

In 2020, there is continued trend of a large number of appeals against procurement documentation. With appeals against procurement documentation the economic operators mostly try to point out the unlawfulness of procurement documentation related to the technical specifications of the subject of procurement, where appellants indicate potential preferential treatment for certain economic operators, or try to point out in their appeals possible distortions of the competition and limited access to the tender process.

As pointed out in the 2019 report, the data presented for 2020 show an unnaturally large number of appeals against procurement documents that were filed immediately before the opening of bids, and which were in a disproportionately large number dismissed as untimely or due to non-payment of the appellate fee. Therefore it can be concluded that some economic operators do not file appeals against procurement documentation in order to obtain legal protection against the unlawful actions of the contracting authority, but to take advantage of the fact that untimely appeals against procurement documentation also stop the procedures and postpone the opening of tenders, and thus delay the procurement process or exert pressure on the contracting authority. According to the State Commission, these situations can lead to circumstances in which corruption risks are more expressed.

Namely, by submitting each appeal against the procurement documentation, the continuation of the procedure is postponed. This specificity of the public procurement procedure makes appeals about procurement documents a very suitable means of abuse and "blocking" the public procurement procedure itself, which is especially problematic in procedures financed from EU funds where contracting within certain deadlines is a precondition for money withdrawal.

In the report for 2019, the State Commission made warning regarding that a large number of appeals were lodged immediately before the opening of tenders (0-4 days before the opening

of tenders), which were obviously untimely and/or no fee was paid for initiating appellate procedures, and consequently they were ultimately dismissed. However, the contracting authorities were obliged to stop the procurement procedures or to postpone the public opening of tenders after these appeals were lodged. Thus, during 2020, it was noticed that the appeals that were filed during this time period (0-4 days before the opening of bids) were very rarely granted (only in 14.28% of cases), while in an extremely high percentage, 63.27% they result in dismissals or termination of procedures (mostly due to untimeliness and non-payment of the fee for initiating the appellate procedures).

The data presented in this report, in particular items 2.6. and 2.7. of the Report, indicate that the possibility exists that certain economic operators, by filing appeals in the period immediately before the opening of tenders in a number of cases, have no real intention to obtain a review of the lawfulness of the actions of the contracting authority, but it is highly possible that they are using the instrument of review to pursue other goals in relation to the procurement process.

In order to partially prevent the malicious possibility of terminating public procurement procedures by lodging an appeal against the procurement documentation without any real intention to obtain a review, the State Commission, same as in the 2019 report, points to the need of legislative amendments whereby the contracting authorities would not stop the procurement procedures or postpone the opening of tenders when the appeal is manifestly untimely. In this way, some of the abuses of the right to appeal would be prevented.

The State Commission further emphasizes that despite the possibilities of abuse of the right to appeal against procurement documents described here, it is still necessary to encourage appeals against procurement documentation, as this is a stage of the procedures where potential errors by the contracting authority can be eliminated, which cannot be corrected at a later stage of the procurement procedures, and may have a negative impact on the outcome of the entire public procurement process.

4.2.3. Obstacles to further shorten the length of appeal proceedings

During 2020, the State Commission additionally shortened the average time from receiving an appeal to making a decision by a total of 4 days. Since the appellate procedure before the State Commission is a contradictory procedure, the precondition for resolving each case is to obtain the documentation of the procedure and the statement of all parties on the allegations of the opposing party in the procedure.

During 2020, the State Commission noted difficulties in the phase of completing appeal cases in those proceedings in which the appeal was not lodged as e-Appeal, given that in these proceedings submissions are submitted through an authorized postal service provider, and in some cases it was observed that there is an avoidance of receiving State Commission's writings. Such behaviour of the parties (usually the appellant) prevents the timely completion of the appeal case and further delays the appeal proceedings. Introduction of e-Appeal as a mandatory way of lodging an appeal, as proposed in point 4.2.1. of this report, would enable the submission of writings through the EPPC of the RC in all appeal proceedings, which would prevent the avoidance of delivery and further affect the shortening of decision-making time in appeal proceedings.

In addition, during 2020, the behaviour of one of the appellants was observed, who continuously lodged appeals without stating the allegations (description of irregularities and explanations), which further prolonged the time required to complete the phase of completing the appeal case. Calling the appellant to eliminate deficiencies in the appeal (which is the obligation of the State Commission in accordance with the applicable legal framework) further, unnecessarily prolongs the duration of the appeal procedure, while a large number of such appeals indicates possible abuse of this procedural institute. In that sense, the State Commission proposed to the competent ministry to amend Article 421 of the PPA 2016 in such a way that the appeal allegations (description of irregularities) should be a mandatory part of the appeal that cannot be subsequently added.

4.2.4. Administrative Court Review

Review in public procurement also includes administrative court review, which, according to the provisions of the PPA 2016, is within the jurisdiction of the High Administrative Court.

After 2019, the High Administrative Court, after several years of stagnation in administrative court protection, started working effectively, and the harmonization of the practice of the State Commission with the positions of the High Administrative Court has begun, related to various legal concepts from the PPA 2016.

During 2020, additional efforts were made to harmonize further the decisions of the State Commission and the positions of the High Administrative Court which is evident from the data on the number of annulled decisions of the State Commission by the High Administrative Court which show that in 2020 out of the total number of decisions in appellate cases received in

2020, extremely low number of decisions were annulled by the High Administrative Court (1, 47%). This undoubtedly contributes to the increase of the legal security, and to the trust of the procurement procedure participants regarding the efficiency and predictability of the legal protection system, and undoubtedly contributes to the strengthening of the entire public procurement system.

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Zagreb, 16 June 2021

PRESIDENT

Maja Kuhar