Towards accountable and transparent public administration by means of functional oversight institutions
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Assessment of Oversight Institutions’ Efficiency and Effectiveness in Ensuring the Public Administration’s Accountability and Transparency
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Abbreviations/Acronyms

RNM
Republic of North Macedonia

EU
European Union

GoRNM
Government of the Republic of North Macedonia

SAI
State Administration Inspectorate

SAO
State Audit Office

SCPC
State Commission for Prevention of Corruption

LOWSAB
Law on Organization and Operation of State Administration Bodies

MOI
Ministry of Interior

PPO
Public Prosecution Office

SPO
Prosecution Office for Criminal Offences Related to and Arising from the Contents of Illegal Interception of Communications

CC
Criminal Code

LCP
Law on Criminal Proceedings

MISA
Ministry of Information Society and Administration

LFAPI
Law on Free Access to Public Information

CPRFAPI
Commission for Protection of the Right to Free Access to Public Information
1. Introduction
“No other contemporary social body or institution has so many and such various means of supervision and control as public administration has. This fact gives an idea of the particular delicate role that the civil service is called upon to play in modern democratic societies.”

- Excerpt from the European Principles for Public Administration -

About the analysis

This analysis aims to assess oversight institutions’ efficiency and effectiveness in ensuring the public administration’s accountability and transparency (hereinafter: analysis) and is focused on track records of several oversight institutions in the Republic of North Macedonia for the period 2013 - 2018. Oversight institutions, defined and enlisted below, are bodies and authorities with assigned competences to perform supervision and control on operations of public administration bodies. In particular, they are authorized to request establishment of political, misdemeanour and criminal responsibility with elected and appointed officials, as well as disciplinary, misdemeanour and criminal responsibility with civil servants.

The purpose of this document is to analyse operation and track records of oversight authorities for a period of six years, facilitate identification of problems and obstacles that make work of oversight mechanisms within the public administration difficult and prevent them from holding public administration bodies accountable and transparent. The document also analyses reasons behind identified problems and proposes recommendations aimed to improve operation of oversight institutions.

Subject of analysis are competences, functions and procedures of oversight mechanisms within the public administration in terms of their authorizations to ensure accountability and transparency of individual bodies and organizations. Furthermore, the report analyses and compares efficiency and effectiveness of oversight institutions for the period 2013 - 2018 in ensuring accountability and transparency of individual bodies and organizations.
Analysis findings and recommendations will contribute to definition of credible and evidence-based policies as part of upcoming reforms anticipated and planned under the recently adopted Strategy on Public Administration Reform 2018-2022 and Action Plan.

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About oversight mechanisms

For the purpose of this analysis, oversight institutions are defined as state government bodies, state administration bodies, state authorities, as well as autonomous and independent authorities and bodies which, pursuant to their respective functions, hold law-stipulated competences to perform supervision, inspection and control over operation of public administration bodies. Based on these actions, they are entitled to request establishment of adequate political, disciplinary, misdemeanour and criminal responsibility in cases of identified shortcomings and weaknesses related to operation of relevant administration bodies.

Starting point for definition of criteria that provide basis for identification of oversight institutions that are subject of analysis in this report are SIGMA’s European Principles for Public Administration. According to these principles, accountability and transparency are underlying principles of the administrative law. Accountability means that no bodies or organizations should be exempted from detailed oversight or control by other authorities. Also, accountability is essential precondition for attainment of the principles on efficiency, effectiveness and predictability of the public administration.

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Precondition for implementation of the accountability principle is existence of oversight activities thus guaranteeing that public administration bodies and organizations perform their mandates and competences in compliance with the law and respect procedures in place.\textsuperscript{2} Hence, institutions and mechanisms are created to perform oversight and control functions. They could be of different organizational form and setup (courts, prosecution offices, ombudsman, internal and external audits, inspectorates,\textsuperscript{3} etc.). By means of oversight functions performed by these institutions, each within their respective competences, they also protect the rights of individuals and the public interest, improve the quality of decision-making and ultimately contribute to increased confidence, legal security and legitimacy of the public administration.

In the Republic of North Macedonia, oversight institutions could be internal bodies, i.e. bodies within the executive government (immediately higher state authority, government, State Administration Inspectorate, etc.) or external bodies, i.e. independent from the executive government (State Audit Office, Commission for Protection of the Right to Free Access to Public Information, Ombudsman of the Republic of North Macedonia, Public Prosecution Office, etc.). These so-called “oversight” institutions have competences over all public administration bodies, and therefore the effort to monitor and assess their operation and track record could provide direct insight into whether and to what extent the public administration is accountable and transparent. Functions performed by these institutions, each within their relevant competences, concern monitoring and supervision of public administration bodies, in general or with narrow focus on individual activities and procedures at these bodies. In cases when particular shortcomings are identified, oversight institutions are obliged to initiate and to conduct proceedings to establish adequate responsibility with authorized officers. In other words, responsibility for “early detection and resolution” of certain negative processes in the public administration that imply lack of accountability and transparency lies with these oversight institutions. Failure to perform their functions commonly results in system impunity and public administration’s non-accountability.

In the past, efficiency and effectiveness of oversight institutions in monitoring and enhancing accountability and transparency of the public administration have proved insufficient and inadequate. Long-standing disrespect for functions performed by these institutions was one of the factors that contributed to the

\textsuperscript{2} Ibid. p. 13.

\textsuperscript{3} Ibid.
European Union’s qualification of the Republic of North Macedonia as “captured state”. Reasons that have led to this qualification are of legal, institutional and political nature.

Hence, the focus of this report is on a number of oversight institutions, grouped according to their categorization as bodies within the executive government or independent bodies and authorities, as follows:

a) Oversight institutions within the executive government

- **Government of the Republic of North Macedonia**, as the state body responsible to oversee lawfulness and efficiency in operation of state administration bodies, appoint and dismiss managers at state administration bodies, and authorized to exert direct influence on enhancing accountability and transparency of the public administration;

- **State Administration Inspectorate**, which *inter alia* performs oversight on enforcement of procedural laws that govern the citizens’ rights and obligations, primarily the Law on General Administrative Procedure, Law on Inspection Supervision and other laws that include provisions on administrative procedure, but also the Law on Public Sector Employees, Law on Civil Servants and Law on Prohibition and Prevention of Unregistered Activity, and the Regulations on Office Operations;

- **Sector on Financial Inspection in the Public Sector**, as organizational unit within the Ministry of Finance which controls lawfulness of financial transactions and other activities in the field of financial management and control at public administration bodies; and

- **Ministry of Interior**, as law enforcement agency with authorizations to prevent perpetration of criminal offences and misdemeanours by civil servants and public office holders, detect and apprehend perpetrators thereof, and take other measures, as stipulated by law, to prosecute perpetrators of such activities.

b) Independent oversight institutions

- **State Audit Office**, which audits compliance of public administration bodies with the laws, bylaws and internal acts;

- **Ombudsman Office**, which protects human rights of citizens when they have been violated by public administration bodies;
• **State Commission for Prevention of Corruption**, which is authorized to initiate proceedings before competent bodies for dismissal, deployment, replacement or other liability measures, as well as to motion criminal charges against elected and appointed officials or authorized officers at public administration bodies;

• **Public Prosecution Office**, which is tasked to investigate and prosecute criminal offences perpetrated by authorized officers, i.e. public officials in the public administration. In the capacity of special body, the Prosecution Office for Criminal Offences Related to and Arising from the Contents of Illegal Interception of Communications (i.e. the Special Prosecution Office) performs all functions related to investigation and criminal prosecution, but is structurally and functionally separated from the regular prosecution’s organization. This report analyses and compares performance of both prosecution offices in terms of investigation and prosecution of criminal offenses against public office and duty;

• **Commission for Protection of the Right to Free Access to Public Information**,\(^4\) which takes second instance decisions in procedures initiated by means of information requests and is authorized to initiate misdemeanour proceedings to establish responsibility for actions taken in violation of the Law on Free Access to Public Information.

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### About responsibility

Responsibility of public administration bodies primarily concerns responsibility of management staff at these bodies (ministers, directors, etc.), as well as responsibility of staff members that hold the status of civil servants. As such, responsibility could take several forms and types, those being: political, criminal, misdemeanour and disciplinary.

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\(^4\) The Law on Free Access to Public Information ("Official Gazette of RNM" no. 101 from 22.5.2019) anticipates the Commission for Protection of the Right to Free Access to Public Information to be replaced by another organizational form, i.e. agency. Nevertheless, due to the fact that the current commission performs oversight functions, the same was subject of analysis in this document.
Political responsibility lies with ministers and deputy ministers, directors of state administration bodies and their deputies, as well as other officials appointed by the government in compliance with particular laws. Political responsibility also implies dismissal of these officials by means of government decision. In other words, political responsibility is exercised through authorizations entrusted to the government as the holder of executive powers in the state to dismiss ministers or other state officials. The government draws its authorizations for appointment and dismissal of these officials from the Law on Organization and Operation of State Administration Bodies.\(^5\)

Criminal responsibility is established when managers and staff members at public administration bodies have performed actions considered criminal offences in compliance with the Criminal Code of the Republic of North Macedonia. Due to the nature of criminal offences, i.e. most serious forms of unlawful actions, they imply serious consequences and sanctions, including imprisonment sentences. Criminal responsibility is regulated under the Criminal Code, while procedures on establishing such responsibility are stipulated under the Law on Criminal Proceedings.

Misdemeanour responsibility exists in cases when managers and staff members at public administration bodies have engaged in actions that amount to unlawful acts defined by law as misdemeanours. Although general material and legal norms on misdemeanour responsibility, types of misdemeanour sanctions, and procedural norms on proceedings for issuance of misdemeanour sanctions are regulated under central law, i.e. the Law on Misdemeanours, separate material and legal norms on individual misdemeanours of different nature and subject to different sanctions are regulated under an array of different laws. Managers at public administration bodies are liable to separate misdemeanour responsibility. Misdemeanour proceedings are led and misdemeanour sanctions are issued only by competent courts. As an exemption therefrom and when stipulated by separate law, as well as in cases of certain misdemeanours that are subject of fines that do not exceed particular predefined amount, misdemeanour proceedings could be led and misdemeanour sanctions could be imposed by misdemeanour bodies.\(^6\) Misdemeanour bodies are public bodies, independent regulatory bodies and other bodies competent to lead misdemeanour proceedings and issue misdemeanour sanctions in compliance with the law.\(^7\)

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5 Article 47, paragraph 2 of the Law on Organization and Operation of State Administration Bodies
6 Article 49 of the Law on Misdemeanours
7 Article 3 of the Law on Misdemeanours
Disciplinary responsibility is related to performance of work tasks and duties. This type of responsibility concerns civil servants, but not managers of institutions appointed by the Parliament or the Government of the Republic of North Macedonia. However, responsibility for criminal offences or misdemeanours does not preclude establishment of disciplinary responsibility. Disciplinary responsibility is regulated under Chapter XII of the Law on Civil Servants. Disciplinary responsibility could be demonstrated as misconduct and wrongdoing. Disciplinary violations are subject of disciplinary measures. Disciplinary measures are issued as part of proceedings regulated under the same law, and they include the right to appeal before the Administration Agency.

8 Articles 72 and 73 of the Law on Civil Servants
9 Article 74 of the Law on Civil Servants
2. Methodology
Research question

The central question researched in this report is whether and to what extent oversight institutions’ operation results in increased accountability and transparency of public administration bodies. In order to answer this question, six individual sub-questions were defined and were subject to data collection and analysis, as follows:

• Does the legal framework in place regulate competences and proceedings of oversight institutions in sufficient, clear, unambiguous and applicable manner?

• Whether and to what extent the legal framework is enforced and applied in the practice? If not, what are the reasons thereof?

• Are there overlapping competences among different oversight institutions? How do overlapping competences affect operation of oversight institutions?

• Whether and to what extent acts and actions of oversight institutions (recommendations, reports, orders, etc.) are implemented in the practice?

• Do current authorizations under the legal framework have “deferring” effect on public administration bodies to act in accountable and transparent manner?

• What are key problems and challenges that negatively affect efficiency and effectiveness of oversight institutions in performing their control/oversight functions?
Methodology approach

A combined methodology approach was used to collect and analyse quantitative and qualitative data necessary to answer these research questions, as well as to assess and compare efficiency and effectiveness of individual oversight institutions.

a) Data collection methods

Data collection methods used for development of this analysis:

• desk research, which resulted in collection, analysis and systematization of various documents, such as:

• regulations, including laws and accompanying bylaws that govern operation of oversight institutions that are subject of analysis in this report (enlisted in annexes 1 and 2 to this report);

• annual operation reports and other specific reports published by oversight institutions that are subject of analysis in this report, available on their official websites;

• other reports and analyses related to, *inter alia*, oversight institutions that are subject of analysis in this report (for example, EU Country Progress Reports, reports developed and published by CSOs, etc.);

• relevant scholar and expert literature (enlisted in annex 1);

• internet news-aggregators (for example, time.mk) to browse media reports related to bodies and authorities that are subject of analysis in this report.

• collection of qualitative and quantitative data by submitting requests under the instrument for free access to public information (FOI requests), which resulted in compilation of information that are not published in institutions’ reports, but are necessary to measure indicators defined below.
b) Tools and methods applied to analyse collected data (indicators)

Data were analysed against pre-defined matrix comprised of qualitative and quantitative indicators. To ensure consistency and facilitate comparisons, joint indicators were developed for all oversight institutions. Indicators are grouped under five areas, as follows: quality of the legal framework, independence, capacity, efficiency and effectiveness.

**Indicators on quality of the legal framework**

- Legal framework on “oversight functions” is regulated in clear, precise and unambiguous manner. Analysis of overall law provisions does not show legal gaps and inconsistencies in regulation of oversight functions.

- Subject matter of control/oversight (obligations of public administration bodies that are subject to oversight) is clearly defined. There are no overlapping competences in terms of subject matter with other oversight institutions.

- Control/oversight proceedings are regulated in complete and precise manner.

- Oversight institution is authorized to take measure of coercion and sanction against officials and civil servants who have engaged in misconduct and wrongdoings.

- Oversight institution is authorized to directly issue sanctions or initiate proceedings before other bodies competent to issue sanctions.

**Indicators on the oversight institution’s independence**

- Legal framework guarantees the oversight institution’s independence and provides special guarantees that prevent political pressures.

- Oversight institution is held accountable for its operation before another authority.

- Method of appointment at the oversight institution guarantees independence of its management.

- Oversight institution’s budget is essentially independent. Budget funds are sufficient to meet the institution’s needs.
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- Oversight institution is obliged to submit annual operation reports. Is the oversight institution liable to consequences when its annual reports are not adopted by the higher state authority reconsidering them? What do such consequences include?

**Indicators on the oversight institution’s capacity**

- Number and structure (titles and level) of staff members whose job descriptions include performance of oversight functions.

**Indicators on the oversight authority’s efficiency**

- Number of individual procedures/dockets/cases for the years 2013, 2014, 2015, 2016, 2017 and 2018 in which the oversight institution performed its oversight functions, grouped according to the manner in which proceedings are initiated (ex-officio, complaint/request by citizens, or request by another state authority).

- Number of individual procedures/dockets/cases for the years 2013, 2014, 2015, 2016, 2017 and 2018 in which the oversight institution established shortcomings/responsibility with officials/civil servants, grouped according to the type of measures issued.

- Share of individual procedures/dockets/cases in which the oversight institution acted and established shortcomings/responsibility.

**Indicators on the oversight institution’s effectiveness**

- Number of managers at public administration bodies who were dismissed from office at request of the oversight institution in the years 2013, 2014, 2015, 2016, 2017 and 2018, grouped by oversight institution and by public administration body.

- Share of public administration bodies that were subject to control/oversight and acted upon indications issued by the oversight institution.

- Number of disciplinary proceedings motioned by the oversight institution in cases of established disciplinary violations, share of cases in which disciplinary proceedings are formally initiated, and share of cases in which decisions were taken on establishing disciplinary violation.

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10 These indicators will be assessed only in the case of oversight institution defined under the previous heading.
• Number of misdemeanour proceedings motioned in cases of violations established by the oversight institution, share of cases in which formal misdemeanour proceedings were initiated, and share of cases in which formal decisions were taken by courts or misdemeanour bodies on establishing misdemeanour responsibility.

• Number of criminal charges motioned before the Public Prosecution Office, share of cases in which the Public Prosecution Office raised indictments, and share of cases in which decisions were taken by courts on establishing criminal responsibility.

Research limitations

When reading findings presented in this document, due consideration should be made of research limitations, as elaborated below.

• This research does not analyse responsibility of administration bodies before line ministries. Due to parallel enforcement of the Law on Organization and Operation of State Administration Bodies (hereinafter: LOOSAB) and vast number of separate laws that establish state administration bodies, it is difficult to conduct an overall analysis of all oversight mechanisms, mainly due to vague hierarchical structure and unclear division of responsibilities. Moreover, this is also a result of the fact that oversight over operation of bodies and organizations within line ministries and of other state administration bodies is conducted by relevant ministries (LOOSAB, art. 41) who are then all held accountable before the Government of the Republic of North Macedonia (LOOSAB, art. 96). Hence, any research effort to cover oversight over line ministries would require considerable resources and impose methodological challenges, having in mind the number of line ministries and the number of administration bodies.

• The subject of analysis in this report does not cover public internal financial controls, as regulated under the Law on Public Internal Financial Control, in particular because these controls are not performed by separate oversight institution, but organizational units within public administration bodies.
• Operation of the State Commission on Second Instance Decision-Making in Administrative Procedure and Labour Disputes and operation of Administrative Courts is also not subject of analysis in this research because they are not organized as oversight institutions competent to perform control and provide guidelines and recommendations about overall operation of any public administration body. Their competences are narrowly focused on decision-making in individual administrative procedures, i.e. administrative disputes.

• At the time when this document was developed, the Parliament passed two new laws, i.e. the Law on Prevention of Corruption and Conflict of Interests and the Law on Free Access to Public Information. In general, both new laws significantly improve the legal framework for two oversight institutions that are subject of analysis in this report, i.e. the State Commission for Prevention of Corruption and the Commission for Protection of Right to Free Access to Public Information (to be transformed into agency). Hence, smaller focus would be put on the legal framework for these two oversight institutions.

11 “Official Gazette of RNM” no. 12/2019
12 “Official Gazette of RNM” no. 101/2019
3. Research Findings
1. Government of the Republic of North Macedonia

Government of the Republic of North Macedonia:

- establishes the principles of internal organization and operation at line ministries and other administration bodies, directs and oversees their operation;
- appoints and dismisses public office holders and other officials, as stipulated in the Constitution and the laws.

1.1 Description of competences

Government of the Republic of North Macedonia holds executive powers. It is comprised of president/prime minister and line ministers. The government is held politically responsible for its operation before the Parliament. According to the Constitution, state administration bodies are held responsible for their operation before the government. Responsibility is exercised through government authorizations related to: 1) establishing the principles on internal organization and operation at line ministries and other administration bodies, directing and overseeing their operation; and 2) appointing and dismissing public office holders and other officials as stipulated in the Constitution and the laws (Constitution, art. 91). Hence, public office holders and other government-appointed officials are held politically responsible for their operation before the government.

More specifically, these two key “oversight” authorizations are regulated and stipulated in detail under the Law on the Government and the Government’s Rules of Procedure. The government adopts guidelines and opinions on enforcement of laws and other regulations. In particular, these guidelines and opinions regulate: 1) method of operation at line ministries, other state administration bodies and administrative organizations in enforcing laws and other regulations; 2) deadlines for adoption of acts falling within competences.

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13 Article 96 of the Constitution
14 Article 91 of the Constitution
of these bodies and deadlines for submission of reports on particular issues; 3) method of cooperation with other state authorities, as well as other important issues related to performance of functions entrusted to these bodies.\textsuperscript{15}

In addition to guidelines and opinions, the government has oversight authorizations related to constitutionality and lawfulness in operation of line ministries and other state administration bodies. When particular regulations adopted by competent ministers are not in compliance with the Constitution, laws or other regulations, the government could issue instructions to the competent minister or withhold enforcement of contested regulations and propose the minister to amend or withdraw contested regulations within given deadline.\textsuperscript{16}

In particular, the government exercises its oversight functions by means of its right to appointment and dismissal. President of the Government submits proposals for appointment and dismissal of the secretary general and his/her deputy, directors or their deputies at independent state administration bodies, and the secretary at the Secretariat for Legislation. On the other hand, line ministers submit proposals for appointment and dismissal of state secretaries at their ministries, directors of bodies and organizations within their ministries, directors of public enterprises, public institutions or public services overseen by their ministries, members of management boards at public enterprises overseen by their ministries and in other cases stipulated by law. Appointment and dismissal proposals are submitted in writing to the Government’s Commission on Appointments. This commission reconsiders proposals and presents the government with proposed decision on appointment, i.e. dismissal.\textsuperscript{17}

\subsection*{1.2 Performance of oversight functions}

The framework on institutional organization of the executive government is given in the Law on the Government, Law on Organization and Operation of State Administration Bodies and number of separate laws that govern different spheres of state operations in the society. As a result, regulations on status,  

\textsuperscript{15} Article 27 of the Law on the Government
\textsuperscript{16} Articles 29 and 30 of the Law on the Government
\textsuperscript{17} Articles 99 to 102 of the Government’s Rules of Procedure
organization and operation of state administration bodies and government oversight functions are fragmented, complex and vague, and they are subject to frequent amendments.\textsuperscript{18}

Parallel effect of LOOSAB and numerous \textit{lex specialis} have blurred any distinctions between different types of bodies and institutions. In establishment of separate bodies/institutions by means of special laws due consideration was not made of the hierarchical setup, subordination of individual bodies, overlapping competences, strict definition of competences per sector and/or adequate assignment of functions to bodies/institutions, thereby causing serious problems in the practice related to performance of their basic functions.

In addition to the issue of institutional setup, there are no clear lines of responsibility for holders of operational functions at oversight institutions they manage (for example, inspectorates that have the status of bodies within ministries) and control/oversight mechanisms are not established at all institutions, resulting in a situation whereby some institutions report to both, their ministry and the government.\textsuperscript{19} For example, the Agency for Food and Veterinary Matter, as independent state administration body in the meaning of Article 6 of the Law on Organization and Operation of State Administration Bodies, is held accountable before the government, but also before its ministry, i.e. the Ministry of Agriculture, Forestry and Water Economy.

Terms and conditions for dismissal of public office holders appointed by the government are regulated under vast number of special laws that govern operation of administration bodies. Such dispersed method of regulation has resulted in different terms and conditions for dismissal of particular officials or failure to stipulate possibilities for their dismissal on the grounds of identified misconduct and wrongdoings. Hence, directors at the Administration on Security and Counter-Intelligence, Bureau of Public Security, and Administration for Financial Intelligence could be dismissed on the grounds of “irresponsible and unprofessional performance of their tasks and duties”.\textsuperscript{20} On the other hand, relevant legislation fails to stipulate terms and conditions for dismissal of directors at the Administration for Execution of Sanctions, Customs Administration, State Market Inspectorate and Bureau for Education Development, whereby the government enjoys broad discretionary rights in


\textsuperscript{19} Ibid.

\textsuperscript{20} Article 24 of the Law on Internal Affairs; Article 16, paragraph 3 of the Law on the Police, and Article 68, paragraph 5 of the Law on Prevention of Money Laundering and Financing Terrorism
that regard. In the case of the Bureau of Public Procurements and the Public Revenue Office, their respective directors could be dismissed on proposal from competent ministers. Nevertheless, grounds for their dismissal are not defined in detail, thus leaving broad discretionary rights to line ministers and the government.

In order to establish whether and to what extent the government performs its oversight functions in terms of its right to appoint and dismiss public office holders, necessary data and information were requested under the instrument for free access to public information, as follows:

- total number of government-appointed officials who were dismissed in the period 2013-2018, relevant institutions at which they performed their public office, reasons for their dismissal; and
- total number of dismissed officials as a result of findings, information or opinions issued by oversight institutions.

Unfortunately, contrary to the Law on Free Access to Public Information the government adopted conclusions on discontinuing procedure under the instrument for free access to public information on the grounds that it has not created and is not in possession of the information requested. These conclusions were appealed before the Commission for Protection of the Right to Free Access to Public Information, and they are pending resolution. Rationale offered by the government is unfounded because the state authority that appoints and dismisses public officials is undoubtedly in possession of information requested. Due to lack of data and circumstances whereby, pursuant to Article 97, paragraph 2 of the Government’s Rules of Procedure, decisions on appointment and dismissal of public office holders are published in the “Official Gazette”, but only if the government decides to publish them, this report is unable to assess whether and to what extent the government has performed its oversight functions in the analysed period by exercising its right to dismiss public office holders.

21 Article 44, paragraph 5 of the Law on Public Procurements and Article 10 of the Law on the Public Revenue Office

22 Conclusions no. 50-407/2, 50-406/2 and 50-406/2.
1.3 Conclusions and recommendations

The government is “supreme” body within the public administration. Political powers and political responsibility require the government to perform its oversight functions over public administration bodies in essential and meaningful manner. Nevertheless, dispersion of regulations on different bodies and institutions under separate laws, drafted in ununiformed manner and vocabulary, make its oversight functions blurred and, except in declarative form, they are reduced to authorizations on appointment and dismissal of managers at vast number of public administration entities. Even performance of these authorizations, due to lack of data on the number of dismissed officials, cannot be adequately analysed. According to the Government’s Rules of Procedure, decisions (as acts on appointment and dismissal of public office holders) are published in the “Official Gazette”, but only if the government decides to publish them on case-by-case basis.\(^{23}\) In the practice, this results in non-publication of decisions on appointment and dismissal. With a view to ensure greater transparency, and having in mind the need to address concerns about political influence in decisions on appointment and dismissal and introduction of the merit-based system, these acts need to be published and accompanied with relevant rationale. Absence of singular and uniform terms and conditions for dismissal of government-appointed officials is another major problem.

\(^{23}\) Article 98, paragraph 2 of the Government’s Rules of Procedure
2. State Administration Inspectorate

The State Administration Inspectorate performs oversight on the manner in which administration bodies enforce the Law on General Administrative Procedure when taking decisions on rights and interests of legal entities and natural persons and enforcement of the rules on office and archive operations. In addition, this inspectorate performs oversight on implementation of the Law on Public Sector Employees, Law on Civil Servants and Law on Prohibition and Prevention of Unregistered Activity.

2.1 Description of competences

State Administration Inspectorate is state administration body within the Ministry of Information Society and Administration tasked to perform matters pertaining to administrative inspection. Its operation is regulated under the Law on Administrative Inspection and Rulebook on Performance of Administrative Inspection Supervision. Administrative inspections concern oversight on enforcement of three groups of regulations by public administration bodies, as well as other entities established by the same law, as follows:

- Law on General Administrative Procedure, Law on Inspection Supervision and other laws that contain provisions on administrative procedure;
- Law on Public Sector Employees, Law on Civil Servants and Law on Prohibition and Prevention of Unregistered Activity; and
- Regulations on Office Operations.

Subject of analysis in this report is oversight related to administrative procedure. Administrative inspections include oversight on public administration bodies in terms of whether and to what extent procedural guarantees in the administrative procedure are enforced, as precondition for fast and efficient exercise of rights enjoyed by citizens and legal entities that are affected by decisions taken in administrative procedure. Oversight is performed over central and local

24 Article 2 of the Law on Administrative Inspection
government bodies, as well as other state authorities established in compliance with the Constitution and the laws, and institutions that perform public activity in the areas of education, science, health care, culture, labour, social protection and child protection, sports, and other activities of public interest, as stipulated by law, which are organized as agencies, state funds, public institutions and public enterprises founded by the state or by the municipalities, i.e. the City of Skopje and municipalities in the City of Skopje.

**Oversight on enforcement of regulations that contain provisions on administrative procedure, inter alia, concerns:**

- acting within stipulated deadlines in first and second instance administrative procedure, as well as within deadlines set forth in acts taken by judicial authorities;
- securing evidence, *ex-officio*, from official records kept by bodies competent to take decisions, other state authorities, legal and other entities with public authorization, municipalities and the City of Skopje;
- implementing enforceable administrative acts;
- receiving submissions/complaints;
- issuing certificates and other public documents based on official records;
- conduct and operation of civil servants and employees, with a view to ensure compliance with the principles of lawfulness, professional integrity, efficiency, responsibility and loyalty in performance of their tasks and duties;
- use of languages spoken by parties in administrative procedures, legal assistance between administration bodies and other participants in administrative procedures, and other matters, as stipulated in the Law on General Administrative Procedure and other laws.

State Administration Inspectorate exercises its oversight functions by performing inspection supervisions that could be regular, extraordinary or control/follow-up. Extraordinary inspection supervisions are conducted upon initiatives, complaints and proposals from state authorities, legal entities and natural persons, and in cases of reasonable suspicion, they could be initiated.
Based on performed inspection supervisions, administrative inspectors compile reports with findings on established state-of-affairs and issue decisions ordering elimination of identified shortcomings, including deadlines for compliance therewith. Administrative inspectors determine compliance with their decisions by performing follow-up inspection supervisions and compile relevant minutes therefrom.

In the case of inspection supervisions on enforcement of regulations that govern administrative procedure, administrative inspectors hold a number of authorizations, as enlisted in Article 9 of the Law on Administrative Inspection, which are essentially reduced to issuing orders to eliminate identified shortcomings, but they are also authorized to motion criminal charges, misdemeanour proceedings or disciplinary proceedings.

When administrative inspectors find evidence that violation of regulations amounts to criminal offence, misdemeanour or serious violation of public office and duty (i.e. serious violation of public service’s reputation or civil servant’s reputation), they are obliged to motion criminal charges, misdemeanour proceedings or disciplinary proceedings. When administrative inspectors present managers of institutions where oversight is performed with motions for disciplinary proceedings against officials or authorized officers who take actions in administrative procedure, the latter are obliged to notify relevant inspectors of actions they have taken upon said motions within a deadline of 30 days from their receipt. Misdemeanour proceedings are led and misdemeanour sanctions are issued by competent courts, but the State Administration Inspectorate holds authorizations to issue payment orders and conduct settlement.

2.2 Performance of oversight functions

Having in mind that it is a matter of oversight institution which, for long string of years, has been integral part of the state administration and is entrusted with straightforward functions, the legal framework in place, i.e. the Law on Administrative Inspection, provides satisfactory regulation of operations performed by this inspectorate. There are no serious legal gaps and inconsistencies in respect to administrative inspections. However, the analysis
identified some contradictory provisions, for example, paragraphs 2 and 1 under Article 1, whereby paragraph 2 stipulates duties of administrative inspectors to motion disciplinary proceedings against authorized officers in cases referred to under paragraph 1 of the same article, which in fact do not concern matters of factual nature, but rather types of orders that could be issued by administrative inspectors. In particular, this inspectorate is authorized to motion disciplinary proceedings in cases of failure to act upon orders issued and is authorized to issue payment orders for misdemeanours stipulated under the Law on Administrative Inspection.

According to 2018 data from the Register of Public Sector Employees, this inspectorate employs 38 staff members,\(^{27}\) which is significantly below the number established in the Rulebook on Systematization of Jobs, i.e. 62 staff members in total.\(^{28}\) Administrative and technical matters of this inspectorate are performed by one employee in the Government’s Department on General and Common Affairs. On this account and having in mind the inspectorate’s scope of work, justifiable concerns are raised about its capacity to exercise its functions.

Compared to other oversight mechanisms that are subject of analysis in this document, the State Administration Inspectorate has performed relatively higher number of activities in exercising its oversight functions. More specifically, in the analysed period, total number of individual supervisions performed by this inspectorate ranges from 2,558 (2018) to 4,351 (2015).

Lack of data on the number of entities that have been subject of oversight prevents calculation of their share in total number of entities that could potentially be subject of administrative inspections. In particular, the State Administration Inspectorate keeps statistical data on all oversight performed and not oversights performed per entity, because individual entities could be subject of multiple oversights in the course of one year.

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### Table no.1: Number of oversights performed by the State Administration Inspectorate in the period 2013-2018

<table>
<thead>
<tr>
<th></th>
<th>2013</th>
<th>2014</th>
<th>2015</th>
<th>2016</th>
<th>2017</th>
<th>2018</th>
</tr>
</thead>
<tbody>
<tr>
<td>Total number of oversights</td>
<td>2.770</td>
<td>2.734</td>
<td>4.351</td>
<td>3.567</td>
<td>2.933</td>
<td>2.558</td>
</tr>
<tr>
<td>Change against the previous year (in %)</td>
<td>-1%</td>
<td>59%</td>
<td>-18%</td>
<td>-18%</td>
<td>-13%</td>
<td></td>
</tr>
<tr>
<td>Regular inspection supervisions</td>
<td>1.219</td>
<td>1.312</td>
<td>1.146</td>
<td>1.801</td>
<td>814</td>
<td>581</td>
</tr>
<tr>
<td>Share of regular inspection supervisions in the total number of oversights</td>
<td>44%</td>
<td>48%</td>
<td>26%</td>
<td>50%</td>
<td>28%</td>
<td>23%</td>
</tr>
<tr>
<td>Follow-up inspection supervisions</td>
<td>680</td>
<td>428</td>
<td>827</td>
<td>594</td>
<td>913</td>
<td>739</td>
</tr>
<tr>
<td>Share of follow-up inspection supervisions in the total number of oversights</td>
<td>25%</td>
<td>16%</td>
<td>19%</td>
<td>17%</td>
<td>31%</td>
<td>29%</td>
</tr>
<tr>
<td>Extraordinary inspection supervisions</td>
<td>871</td>
<td>994</td>
<td>2.378</td>
<td>1.172</td>
<td>1.206</td>
<td>1.238</td>
</tr>
<tr>
<td>Share of extraordinary inspection supervisions in the total number of oversights</td>
<td>31%</td>
<td>36%</td>
<td>55%</td>
<td>33%</td>
<td>41%</td>
<td>48%</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Number of oversights performed in relation to administrative and office operations</th>
</tr>
</thead>
<tbody>
<tr>
<td>Number of oversights performed in relation to administrative and office operations</td>
</tr>
<tr>
<td>Share of oversights performed in relation to administrative operations</td>
</tr>
</tbody>
</table>

The middle value (median number)\textsuperscript{30} of oversights performed by the State Administration Inspectorate in the analysed period is around 2,850. Although this figure does not correspond to the number of entities that are subject of oversight (which, only in respect to regular inspection supervisions accounted for around 350 different entities in 2018), when compared against the total number of public sector institutions (1,314) provides the conclusion (albeit with some reserve) that oversights performed by the State Administration Inspectorate have covered significant share of public sector institutions. This is indicative of relatively high efficiency demonstrated by this inspectorate.

\textsuperscript{29} State Administration Inspectorate. Response to FOI Request no. 03-36/3 from 25.2.2019.

\textsuperscript{30} Due to high number of oversights in 2015, which amounted to significant deviation from other values (outlier), this report uses median instead of average value in order to provide more realistic image about the usual number of annual oversights performed.
In addition, there is a trend of decreasing number of regular inspection supervisions planned under the inspectorate’s annual operation program to the benefit of increasing number of extraordinary inspection supervisions, initiated on request by natural or legal entities or other state authorities. Except for 2015, which is marked by significant deviation (due to request by the Ministry of Information Society and Administration for extraordinary inspection supervisions in compliance with the Law on Public Sector Employees), there is stable trend of increasing number of extraordinary inspection supervisions performed by this inspectorate. This could be indicative of increased awareness among citizens to address the State Administration Inspectorate when they encounter problems with particular public administration bodies. As regards the subject matter of oversight, dominant share of inspection supervisions (marked by trend of increase) concerned administrative and office operations to the detriment of inspection supervisions over operation of the public sector.

Table no.2: Overview of actions and measures taken upon oversights

<table>
<thead>
<tr>
<th></th>
<th>2013</th>
<th>2014</th>
<th>2015</th>
<th>2016</th>
<th>2017</th>
<th>2018</th>
</tr>
</thead>
<tbody>
<tr>
<td>Conclusions on non-initiation/discontinuation of oversight proceedings</td>
<td>354</td>
<td>3,220</td>
<td>1,428</td>
<td>538</td>
<td>262</td>
<td></td>
</tr>
<tr>
<td>Inspection measures</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Decisions</td>
<td>1,670</td>
<td>1,680</td>
<td>1,131</td>
<td>1,653</td>
<td>1,009</td>
<td>700</td>
</tr>
<tr>
<td>Invitation for settlement</td>
<td>31</td>
<td>29</td>
<td>21</td>
<td>14</td>
<td>24</td>
<td>11</td>
</tr>
<tr>
<td>Initiated misdemeanour proceedings</td>
<td>15</td>
<td>29</td>
<td>16</td>
<td>9</td>
<td>4</td>
<td>11</td>
</tr>
<tr>
<td>Initiated disciplinary proceedings</td>
<td>24</td>
<td>12</td>
<td>22</td>
<td>17</td>
<td>18</td>
<td>42</td>
</tr>
<tr>
<td>Share of oversights that established irregularities</td>
<td>60.29%</td>
<td>61.45%</td>
<td>25.99%</td>
<td>46.34%</td>
<td>34.40%</td>
<td>27.37%</td>
</tr>
<tr>
<td>Share of initiated misdemeanour proceedings in total number of decisions</td>
<td>0.90%</td>
<td>1.73%</td>
<td>1.41%</td>
<td>0.54%</td>
<td>0.40%</td>
<td>1.57%</td>
</tr>
<tr>
<td>Share of initiated misdemeanour proceedings in total number of decisions</td>
<td>1.44%</td>
<td>0.71%</td>
<td>1.95%</td>
<td>1.03%</td>
<td>1.78%</td>
<td>6.00%</td>
</tr>
</tbody>
</table>

32 State Administration Inspectorate, Response to FOI Request no. 03–36/3 from 25.2.2019.
Analysis of data shows decreasing share of established irregularities. Hence, unlike the situation in 2013 when irregularities were established in high 60.29% of oversights performed, irregularities were identified in 27.37% of oversights performed in 2018. On average, misdemeanour and disciplinary proceedings (motioned only in cases when irregularities have not been eliminated after follow-up supervision is conducted) were initiated in only 1.62% of cases. The State Administration Inspectorate has not presented the Public Prosecution Office with data for initiation of criminal charges.

2.3 Conclusions and recommendations

On the account of the large scope of bodies and organizations that are subject of oversight, the State Administration Inspectorate demonstrates satisfactory efficiency in performance of administrative inspections. The legal framework is satisfactory, but questions are raised whether competences for performance of oversight on enforcement of the Law on Public Sector Employees and Law on Civil Servants actually distracts this inspectorate from performance of oversight on implementation of administrative procedure to the benefit of citizens and legal entities as parties in labour-related disputes. The trend on decreasing number of oversights in which irregularities were established could be partially attributed to satisfactory effectiveness demonstrated by this institution. Evidence in support thereof is found in the small number of disciplinary and misdemeanour proceedings that are mandatorily motioned in cases when certain bodies fail to act upon orders issued by the State Administration Inspectorate, as established by means of follow-up inspection supervisions.

Nevertheless, efforts are needed to address the issue of insufficient human capacity, as well as to improve statistical records on oversights performed, thus enabling publication of public administration bodies that were subject of oversight and outcomes thereof. Greater transparency could have preventive effect on public administration bodies in terms of acting upon orders issued by administrative inspectors.
3. **Sector on Financial Inspection in the Public Sector**

Financial inspections in the public sector are performed to oversee lawfulness of financial transactions and other activities in the area of financial management and control by state budget beneficiaries, as well as other entities subject to such audits.

3.1 **Description of competences**

Financial inspections in the public sector were established and pursued with a view to protect financial interests of public sector entities against serious financial mismanagement, fraud and corruption. Organization and competences related to financial inspections are regulated under the separate *Law on Financial Inspection in the Public Sector*,\(^3^3\) adopted in 2013. Previously, financial inspections were regulated under the *Law on Public Financial Control*. However, due to remarks made by the European Commission,\(^3^4\) efforts were made to ensure detailed and precise regulation of financial inspections under separate law, as centralized ex-post financial control, and to unbundle them from internal audits.\(^3^5\) Financial inspections are performed by the Sector on Financial Inspection Sector in the Public Sector (hereinafter: the sector) as separate organizational unit within the Ministry of Finance. This sector is chaired by the chief financial inspector, who is held directly responsible before the minister of finance, while financial inspections are performed by financial inspectors.

Financial inspections are performed at state budget beneficiaries, state funds, municipalities and the City of Skopje, agencies and other institutions established by law, public enterprises, public institutions and other legal entities owned by the state or by the municipalities and the City of Skopje, or where the state or the municipalities and the City of Skopje appear as shareholders, as well as at

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\(^3^3\) “Official Gazette of RM” no. 82/2013, 43/2014, 153/2015, and 164/2018


\(^3^5\) Rationale to the Proposed Law on Financial Inspection in the Public Sector, 2013
non-profit organizations and other legal entities and natural persons, but only in regard to management and spending of public funds or public guarantees they have been awarded.

As regards this type of inspections, their initiation necessitates clear, law-stipulated grounds, as enlisted under Article 10 of the Law. Financial inspections are not performed pursuant to previously defined annual program (unlike state audits) and they are not pursued on randomly selected public entities. Financial inspections are initiated in cases when one or more grounds enlisted below are fulfilled:

- request, supported by evidence, information or complaint by legal entities and natural persons;
- notification or records on violation of financial management and control procedures;
- report on financial management and control;
- internal audit report;
- report of the State Audit Office;
- request by the Government of RNM;
- request by managers or staff members at public sector institutions;
- request by the Public Prosecution Office of RNM; and
- request by the European Anti-Fraud Office (OLAF - Office Europeen de Lutte Anti-Fraude).

In order to guarantee impartiality, the Law on Financial Inspection in the Public Sector stipulates criteria for exemption of financial inspectors in particular oversight cases. After establishment that certain exemption criteria defined by law are fulfilled, financial inspectors are obliged to immediately and without any delays discontinue inspection activities and notify, in writing, the chief financial inspector, who takes decision to exempt said financial inspector or to continue activities under financial inspections.

When performing oversight, financial inspectors enjoy broadly defined rights, which are almost identical to rights entrusted to state auditors. Among others, the Law on Financial Inspection in the Public Sector stipulates the right of financial inspectors to be notified by competent courts about decisions adopted
Towards accountable and transparent public administration by means of functional oversight institutions

on the basis of measures taken as part of their inspections. When competent authorities initiate investigation proceedings at the entity subject to financial inspection, financial inspectors discontinue all and any actions by means of which they could impede such investigations.

Financial inspections could be initiated by the chief financial inspector on the grounds enlisted in Article 10 of the Law and upon orders issued by the minister of finance. Financial inspectors compile reports on performed financial inspections and include findings supported by relevant evidence, and they propose measures to the chief financial inspector. Nevertheless, the law allows submission of comments and remarks to these reports before adoption of their final version.

Based on reports from financial inspections in the public sector, the chief financial inspector could take several measures, as stipulated in LFIPS. In the case of shortcomings identified as part of financial inspections performed, the chief financial inspector is obliged to notify the head of the entity subject of inspection and the immediately higher state authority.

3.2 Performance of oversight functions

The Law on Financial Inspection in the Public Sector contains a number of insufficiently precise and contradictory provisions that, in some cases, could have negative effect on effective and efficient attainment of the purpose for which the law was adopted. Hence, the provision under Article 18, paragraph 3 of the Law is imprecise and could open space for dilemmas about its enforcement. According to this provision, the chief financial inspector takes decisions on initiation of financial inspections provided he/she obtains knowledge that amounts to reasonable suspicion of serious financial mismanagement, fraud and corruption. Unlike the previous two paragraphs from the same article, which refer to procedural matters related to initiation of financial inspections,

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36 1) to request entities that are subject of financial inspections to take measures necessary to re-examine financial management systems with a view to eliminate irregularities and/or to eliminate negative consequences from such activities; 2) to request competent authorities or heads of entities that are subject of financial inspections to discontinue activities that have led to irregularities or have caused damages; 3) to request competent authorities or heads of entities that are subject of financial inspections to align internal acts with regulations on financial management and control; 4) to request competent authorities or heads of entities that are subject of financial inspections to take measure on material compensation or disciplinary measures in compliance with the law and to report on their implementation within given deadline; and 5) to block bank accounts or use of budget funds at the level of budget accounts, items or projects until elimination of established irregularities.
the contested provision essentially concerns cases in which decisions are taken to initiate financial inspections. Hence this provision is redundant, given that grounds for performance of financial inspections are already enlisted under Article 10 of the Law. Additionally, four of these grounds refer to request by certain authorities, whereby the chief financial inspector does not have any discretionary rights to decide on initiation of financial inspections.

In addition, the law does not contain provisions that stipulate explicit obligation to notify the public prosecution in cases when financial inspections have identified possible criminal offences being committed. Although, from the legal point of view, this obligation is indisputable and already established in the Criminal Code and Law on Criminal Proceedings, its introduction gives additional weight and significance to financial inspections. The provision under Article 22a of the Law attempts to regulate this matter, but is insufficiently precise. According to this provision, “in cases when financial inspectors establish grounds to take administrative and other measures falling within competences of another state authority, they are obliged to immediately notify relevant authorities thereof”. In addition, further confusion is created by use of the term administrative and other measures. It is unclear whether it is a matter of disciplinary responsibility of civil servants, misdemeanour or criminal responsibility, responsibility of public office holders, etc.

However, the strength of this legal solution is the fact that it authorizes financial inspectors to conduct settlement procedures and issue payment orders when relevant law-stipulated conditions are fulfilled and impose fines for misdemeanours stipulated under the Law on Financial Inspection in the Public Sector. Given these misdemeanours, to great extent, concern actions that imply interference in work performed by financial inspectors, such authorizations could have significant positive effect on operation of these bodies.
Towards accountable and transparent public administration by means of functional oversight institutions

In 2018, the European Commission assessed that capacity of the Sector for Financial Inspection in the Public Sector is poor.\(^{37}\) According to available data obtained from the web page of the Ministry of Finance, only one out of 11 job positions at the Sector for Financial Inspection in the Public Sector,\(^{38}\) as defined in its systematization act, is filled in.\(^{39}\)

In the period 2013–2017, a total of seven (7) financial inspections were initiated, six (6) of which were initiated in 2017 (on the grounds of reports by legal entities or natural persons, supported with evidence) and one financial inspection was initiated in 2015 (on government’s request).\(^{40}\) Activities implemented as part of these financial inspections resulted in establishment of 36 irregularities in total, almost half of which were identified with the Company for Construction, Management and Renting of Multipurpose Sports Hall BORIS TRAJKOVSKI LTD - Skopje, seven irregularities were established with the State Exam Centre – Skopje, four concerned operation of the City Trade Centre (GTC), and three irregularities each with primary school “Cyril and Methodius” in Stojakovo, Bogdanci and Faculty of Philosophy at the University “Ss. Cyril and Methodius”, while two irregularities were identified at Public Enterprise “Macedonian Forests” HQ Skopje, Regional Office Babuna. Majority of law-stipulated measures concern tasking managers at entities that are subject of financial inspections to re-examine their financial management systems and eliminate irregularities established. With the exception of BORIS TRAJKOVSKI LTD, all other entities have taken measures to eliminate irregularities identified. Unfortunately, the Ministry of Finance’s FOI response does not disclose any information in relation to inquiry whether competent prosecution authorities have been notified about identified irregularities or whether misdemeanour proceedings have been initiated. Due to the small number of financial inspections performed, it is difficult to assess whether this oversight mechanism is effective; however, it could be concluded that its track record is extremely poor due to the fact that, in the course of five years from its establishment, it performed only seven financial inspections.


\(^{38}\) Ministry of Finance, Rulebook on Systematization of Jobs (clean copy). Available at: https://www.finance.gov.mk/files/precisten_text_0.pdf

\(^{39}\) Ministry of Finance, List of staff members with job positions, e-mail address and contact telephone. Available at: https://www.finance.gov.mk/mk/node/6807

\(^{40}\) Ministry of Finance, Response to FOI Request from 25.2.2019.
3.3 Conclusions and recommendations

In spite of certain shortcomings that could be easily addressed, the legal framework for this oversight mechanism is deemed satisfactory and allows unhindered performance of its oversight functions. Significant problem is identified in poor human resources that directly prevent performance of complex and labour-intensive financial inspections. The small number of entities subjected to inspection, implies inefficiency of this mechanism, while the scarcity of information available does not allow for a proper assessment of the effectiveness. Significant efforts are needed to reinvigorate financial inspections in the public sector.
4. State Audit Office

State Audit Office is competent to perform:

- **compliance/regularity audits**, to establish and assess compliance of the entity’s operation with relevant laws, bylaws and internal acts; focus on bodies and institutions;

- **performance audits**, to assess cost-effectiveness, efficiency and effectiveness of operations and use of funds in the defined area of activities or programs; focus on policies and programs.

4.1 Description of competences

The State Audit Office is state authority tasked to perform matters pertaining to state audits and is independent in its operation. Competences and internal organization of the State Audit Office, including criteria and method for performance of state audits are stipulated in the *Law on State Audit*[^41] and relevant bylaws.[^42] The legal framework that governs performance of state audits is characterized by direct application[^43] of auditing standards established by the International Organization of Supreme Audit Institutions.

State Audit Office is managed by the chief state auditor and his/her deputy. The chief state auditor is appointed by the Parliament, with term of office in duration of nine years, without the right to second mandate and by means of open call. The chief state auditor and his/her deputy could be dismissed by the Parliament in cases when they no longer fulfil criteria or when they are unable to perform their tasks and duties for a period longer than six months due to illness or due to other justified reasons. Funds for SAO’s operation are approved by the Parliament on proposal by the State Audit Office, as part of separate parliamentary vote on the state budget account intended for this independent state authority.


[^42]: Primarily the Rulebook on Auditing Standards for Performance of State Audits (56/1998) and the Rulebook on Performance of State Audits (158/2011), as well as other bylaws related to the profession of state auditors.

[^43]: According to Article 18 of the Law on State Audit
The State Audit Office performs audits related to regularity/compliance and performance:

- **compliance/regularity audits**, to establish and assess compliance of the entity’s operation with relevant laws, bylaws and internal acts; *focus on bodies and institutions*;

- **performance audits**, to assess cost-effectiveness, efficiency and effectiveness of operations and use of funds in the defined area of activities or programs; *focus on policies and programs*.

**Activities taken under state audits include:**

1. examining documents, records and reports, accounting and financial procedures, electronic data and information systems and other records, to assess whether financial statements and reports provide truthful and objective presentation of actual financial status and financial results in compliance with accepted accounting principles and standards;

2. examining and assessing reports from internal control and internal financial audit, and examining and assessing financial management and control systems in place;

3. examining financial transactions that concern public revenue and expenditure in terms of lawful and purposeful use of public funds;

4. assessing use of public funds in terms of cost-effectiveness, efficiency and effectiveness; and

5. assessing measures taken by entities that are subject of state audits in relation to established situation and recommendations made in the final audit report.

Activities pertaining to state audit are performed by chartered state auditors and state auditors. Chartered state auditors perform their tasks and duties as part of teams comprised of several state auditors. Subject of state audits are all state authorities, state administration bodies, budget beneficiaries and other institutions, agencies and legal entities that benefit from funds disbursed by the state budget.

On annual basis, the State Audit Office performs mandatory audits of the Budget of the Republic of North Macedonia and budgets of relevant state-established funds, while in the case of other entities state audits are performed according to the annual program and deadlines established therein. Prior to initiating state audits, the State Audit Office could (but is not obliged!) request
audited entities to secure all information, including documents, data or other information necessary to plan and perform its audits. Audited entities are obliged to secure all information requested within a deadline of five working days from submission of such requests. Chartered state auditors and state auditors are granted free access to official premises and property of audited entities, right to inspect their relevant records, templates and other documents, electronic data and information systems, and right to request explanations from representatives of audited entities about all and any issues that are important for performance of state audits.

Audited entities are not allowed to limit scope of examining activities or prevent application of particular audit actions. Should such events emerge, the State Audit Office is obliged to note them in its reports, in compliance with audit standards, and to immediately notify thereof the higher authorities before which audited entities are held accountable.

Chartered state auditors compile reports based on audits performed and present them to audited entities’ legal representatives and authorized officers that have managed these entities at the time when audits were performed. They are allowed to submit comments to the State Audit Office within a deadline of 30 days from the receipt of draft reports. After expiration of this deadline, chartered state auditors develop final audit reports. The chief state auditor is obliged to submit audit reports to audited entities’ legal representatives and authorized officers at the time when audits were performed, as well as to other authorities competent to perform oversight and control of audited entities’ operation. Legal representatives of audited entities are obliged to notify the State Audit Office and authorities competent to perform oversight and control about measures taken in relation to findings and recommendations put forward in audit reports, within a deadline of 90 days from the receipt of final audit reports.

In cases when, as part of their audits, chartered state auditors have assessed that audited entities committed misdemeanours or criminal offences, they are obliged to immediately notify competent authorities (art. 35).
4.2 Performance of oversight functions

Article 35 of the Law on State Audit stipulates obligations for chartered state auditors to notify competent authorities in cases when they have assessed that audited entities committed misdemeanours or criminal offences. However, it is not clear whether notifications to the public prosecution amount to motion of criminal charges in the sense of Article 272 of the Law on Criminal Proceedings. This dilemma arises from the use of the verb “notify” instead of the verb “report” as broadly used in the Law on Criminal Proceedings. Hence, this vague provision creates implications in terms of the obligation to inform the State Audit Office about proceedings taken by the Public Prosecution Office upon notifications submitted.

Another contradiction is identified between Article 16, paragraph 1 and Article 14, as the former stipulates that “professional exam to acquire the title of chartered state auditor shall be taken by persons who fulfil requirements defined under article 14 of this law”, while one requirement enlisted there implies “to have passed the exam to acquire the title of chartered state auditor”.

Having in mind the complexity of state audits and responsibilities associated thereto, including the fact that they necessitate expertise and experience, criteria for appointment of the chief state auditor defined under Article 5 of the Law on State Audit are poorly defined and do not guarantee appointment of the most adequate candidate. Relatively low defined criteria create risks for great influence of politics over professional criteria.

In the Republic of North Macedonia, the State Audit Office is not considered constitutionally guaranteed institution, which is contrary to common practices whereby supreme audit institutions are established by the country’s constitution. However, in addition to establishing the State Audit Office as independent state authority, the Law on State Audit provides more guarantees for its independence, such as: appointment of the chief state auditor and his/her deputy by the Parliament (art. 4, par. 3); term of office in duration longer than mandates of the Members of Parliament (art. 4, par. 4); the fact that there are almost no possibilities for dismissal of the chief state auditor and his/her deputy (art. 7); inability of the chief state auditor and his/her deputy to be held criminally responsible or to be detained for expression of views, opinions and recommendations related to audits (art. 11); special parliamentary vote on the state budget account intended for SAO (art. 12); independence in setting salary basis (art. 13c, par. 2); chartered state auditors and state auditors are not allowed to be members of political party bodies, as well as members of management and
supervisory boards or any other governance bodies at other entities (art. 20, par. 6); prohibition to perform audits when there are reasonable grounds that raise concerns about their impartiality: state auditors have previously worked or held public office at audited entities, have participated in development of business records at audited entities, are spouses or relatives up to three times removed to audited entities’ founders, etc. (art. 21); SAO’s annual program is submitted to the Parliament for information purpose, not for discussion and reconsideration thereof (art. 23, par. 2); chartered state auditors and state auditors are not held responsible for expressing opinions about performance of their official tasks and duties (art. 28).

In 2018, state audits were performed by 89 staff members,\textsuperscript{44} chartered state auditors, state auditors and employees at administrative support sectors. Audits were performed by 79 state auditors, while 68 staff members hold certificates for chartered state auditors. Among the total number of staff members, 99% hold university degrees in the field of economics, law, information technology and other fields, and there is a trend on increasing number of staff members with master degrees. Nevertheless, in 2018, only 89 out of 143 job positions anticipated under the systematization act were filled in.\textsuperscript{45}

As regards the number of audits performed and their structure, there is a trend of decreased number of audits from 103 (2013) to 58 (2017). According to their relevant shares, financial audits and compliance audits are predominant compared to performance audits.


Table no.3: Overview of audits performed and their structure

<table>
<thead>
<tr>
<th>Type of audits</th>
<th>2013</th>
<th>2014</th>
<th>2015</th>
<th>2016</th>
<th>2017</th>
</tr>
</thead>
<tbody>
<tr>
<td>Financial audits and compliance audits</td>
<td>93</td>
<td>17</td>
<td>21</td>
<td>36</td>
<td>48</td>
</tr>
<tr>
<td>Thematic audits/compliance audits</td>
<td>3</td>
<td>-</td>
<td>1</td>
<td>2</td>
<td>6</td>
</tr>
<tr>
<td>Performance audits/ Law on Public Internal Financial Control</td>
<td>-</td>
<td>80</td>
<td>13</td>
<td>1</td>
<td>0</td>
</tr>
<tr>
<td>Performance audits</td>
<td>7</td>
<td>6</td>
<td>18</td>
<td>6</td>
<td>4</td>
</tr>
<tr>
<td>Total audits performed</td>
<td>103</td>
<td>103</td>
<td>53</td>
<td>45</td>
<td>58</td>
</tr>
<tr>
<td>Change compared to the previous year (in %)</td>
<td>0%</td>
<td>-49%</td>
<td>-15%</td>
<td>29%</td>
<td></td>
</tr>
</tbody>
</table>

As regards opinions issued, significant number of them are negative opinions and reserve opinions. Only in 2017, 68% of opinions given in the course of financial audits, were negative or reserve, while that percentage is higher with the compliance audits, reaching 88%. There is a worrying trend of increasing share of negative opinions to the detriment of reserve opinions.
Table no. 4: Overview of state audit opinions

<table>
<thead>
<tr>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>FA</td>
<td>Compliance</td>
<td>FA</td>
<td>Compliance</td>
</tr>
<tr>
<td>Opinions without reserve</td>
<td>7</td>
<td>7</td>
<td>17</td>
<td>12</td>
</tr>
<tr>
<td>Share of opinions without reserve in total number of opinions</td>
<td>26%</td>
<td>22%</td>
<td>37%</td>
<td>26%</td>
</tr>
<tr>
<td>Reserve opinions</td>
<td>12</td>
<td>12</td>
<td>19</td>
<td>21</td>
</tr>
<tr>
<td>Share of reserve opinions in total number of opinions</td>
<td>45%</td>
<td>39%</td>
<td>26%</td>
<td>40%</td>
</tr>
<tr>
<td>Negative opinions</td>
<td>6</td>
<td>12</td>
<td>11</td>
<td>14</td>
</tr>
<tr>
<td>Share of negative opinions in total number of opinions</td>
<td>22%</td>
<td>39%</td>
<td>24%</td>
<td>30%</td>
</tr>
<tr>
<td>Withheld opinions</td>
<td>2</td>
<td>0</td>
<td>6</td>
<td>2</td>
</tr>
<tr>
<td>Share of withheld opinions in total number of opinions</td>
<td>7%</td>
<td>0%</td>
<td>13%</td>
<td>4%</td>
</tr>
<tr>
<td>Total:</td>
<td>27</td>
<td>31</td>
<td>46</td>
<td>47</td>
</tr>
</tbody>
</table>

As regards implementation status of recommendations made, there is noticeable reduction in the share of recommendations that have been implemented on the account of recommendations that have not been implemented or audited entities failed to provide any feedback on their implementation. While in 2013, in 61% of the cases, the subjects have acted in full or in partial in accordance with the recommendations, this percentage has significantly declined in 2018, reaching 15%. However, this is partly explained by the fact that in 2018 for 82% of the given recommendations, the subject at hand has not provided any feedback.
Table no. 5: Overview of the implementation status of recommendations made

<table>
<thead>
<tr>
<th>Implementation status of recommendations</th>
<th>2013</th>
<th>2014</th>
<th>2015</th>
<th>2016</th>
<th>2017</th>
<th>2018</th>
</tr>
</thead>
<tbody>
<tr>
<td>Total number of recommendations given</td>
<td>719</td>
<td>833</td>
<td>700</td>
<td>670</td>
<td>789</td>
<td>416</td>
</tr>
<tr>
<td>Recommendations for which a feedback is received</td>
<td>556</td>
<td>762</td>
<td>345</td>
<td>571</td>
<td>321</td>
<td>74</td>
</tr>
<tr>
<td>Share of recommendations for which a feedback is received in total number of recommendations given</td>
<td>77%</td>
<td>91%</td>
<td>49%</td>
<td>85%</td>
<td>41%</td>
<td>18%</td>
</tr>
<tr>
<td>Implemented recommendations/recommendations are fully or partially implemented or their implementation is underway</td>
<td>442</td>
<td>577</td>
<td>262</td>
<td>424</td>
<td>245</td>
<td>64</td>
</tr>
<tr>
<td>Share of implemented recommendations in total number of recommendations given</td>
<td>61%</td>
<td>69%</td>
<td>37%</td>
<td>63%</td>
<td>31%</td>
<td>15%</td>
</tr>
<tr>
<td>Non-implemented recommendations (no actions are taken due to external factors, audited entities dispute recommendations made)</td>
<td>76</td>
<td>180</td>
<td>80</td>
<td>131</td>
<td>72</td>
<td>9</td>
</tr>
<tr>
<td>Share of non-implemented recommendations in total number of recommendations given</td>
<td>11%</td>
<td>22%</td>
<td>11%</td>
<td>20%</td>
<td>9%</td>
<td>2%</td>
</tr>
<tr>
<td>Recommendations that cannot be implemented due to changed circumstances</td>
<td>16</td>
<td>2</td>
<td>3</td>
<td>16</td>
<td>4</td>
<td>1</td>
</tr>
<tr>
<td>Share of recommendations that cannot be implemented in total number of recommendations given</td>
<td>2%</td>
<td>0%</td>
<td>0%</td>
<td>2%</td>
<td>1%</td>
<td>0%</td>
</tr>
<tr>
<td>Recommendations for which audited entities did not provide feedback/follow-up supervision is not performed/auditors lack sufficient information</td>
<td>163</td>
<td>71</td>
<td>355</td>
<td>99</td>
<td>468</td>
<td>342</td>
</tr>
<tr>
<td>Share of recommendations for which audited entities did not provide feedback in total number of recommendations given</td>
<td>23%</td>
<td>9%</td>
<td>50%</td>
<td>15%</td>
<td>59%</td>
<td>82%</td>
</tr>
</tbody>
</table>

Out of 57 notifications to the Public Prosecution Office for 45 entities, the State Audit Office received feedback for only 5 notifications, among which criminal proceedings have been initiated in one case, additional information were requested for another case, and criminal proceedings were not initiated in remaining three cases.

47 State Audit Office, Response to FOI Request no.21-304/1 from 20.3.2019.
Table no. 6: Number of notifications to the Public Prosecution Office

<table>
<thead>
<tr>
<th></th>
<th>2013</th>
<th>2014</th>
<th>2015</th>
<th>2016</th>
<th>2017</th>
<th>2018</th>
</tr>
</thead>
<tbody>
<tr>
<td>Number of notifications submitted to PPO</td>
<td>14</td>
<td>1</td>
<td>6</td>
<td>7</td>
<td>16</td>
<td>13</td>
</tr>
<tr>
<td>Number of audited entities covered by notifications to PPO</td>
<td>13</td>
<td>1</td>
<td>6</td>
<td>5</td>
<td>12</td>
<td>8</td>
</tr>
<tr>
<td>Number of responses from PPO upon notifications submitted</td>
<td>2&lt;sup&gt;49&lt;/sup&gt;</td>
<td>0</td>
<td>2&lt;sup&gt;50&lt;/sup&gt;</td>
<td>0</td>
<td>0</td>
<td>1&lt;sup&gt;51&lt;/sup&gt;</td>
</tr>
</tbody>
</table>

State Audit Office, aside from Public Prosecution Office, notifies other institutions with competencies to act upon their findings. In the period subject to analysis, State Audit Office submitted 14 notifications to the State Commission for Prevention of Corruption, 5 to the Financial Police and 3 to the Ministry of Interior. For all, but one case, the Public Prosecution Office was notified as well.

Table no.7: Number of notifications to other institutions

<table>
<thead>
<tr>
<th></th>
<th>2013</th>
<th>2014</th>
<th>2015</th>
<th>2016</th>
<th>2017</th>
<th>2018</th>
</tr>
</thead>
<tbody>
<tr>
<td>State Commission for Prevention of Corruption</td>
<td>7</td>
<td>0</td>
<td>1</td>
<td>4</td>
<td>0</td>
<td>2</td>
</tr>
<tr>
<td>Financial Police</td>
<td>2</td>
<td>0</td>
<td>1</td>
<td>0</td>
<td>0</td>
<td>2</td>
</tr>
<tr>
<td>Ministry of Interior</td>
<td>0</td>
<td>0</td>
<td>1</td>
<td>0</td>
<td>0</td>
<td>2</td>
</tr>
</tbody>
</table>

48 State Audit Office, Response to FOI Request no. 21–304/1 from 20.3.2019.

49 In one case, the Basic Prosecution Office reported (P.O. 1127/13 from 28.2.2014) that the public prosecutor would not initiate criminal proceedings, while in the second case it referred further proceedings to the Prosecution Office against Organized Crime and Corruption.

50 In one case, the defendant was found guilty and sentenced with probation in duration of two years and restitution fine to be paid to PHI Healthcare Centre Kumanovo in the amount of 424,016 MKD within a period of 10 months, under ruling K-PP –579/16 from 24.11.2016. In the second case, additional information was requested.

51 The Basic Prosecution Office notified SAO that it would not initiate criminal proceedings due to lack of reasonable suspicion that criminal offences committed are prosecuted ex officio, as part of its communication no. 17–283/1 from 8.3.2019 upon audit report for PHI Transfusion Medicine of RM.

52 State Audit Office, Response to FOI Request no. 21–304/1 from 20.3.2019.
4.3 Conclusions and recommendations

State Audit Office is different from its counterpart supreme audit institutions in states across Europe by the fact that it is not defined as constitutional category, i.e. it is established by law. Albeit symbolic, its reference in the Constitution significantly contributes to independence of this institution. Nevertheless, in spite of its status as law-regulated institution, the State Audit Office demonstrates satisfactory track record on auditing budget spending. Transparency of the State Audit Office is also high. However, concerns are raised with low responsiveness of the Public Prosecution Office to audit reports submitted by SAO. In the last six years, the Public Prosecution Office raised criminal charges in only one case from total of 45 notifications submitted. This data is indicative of the failure of the Public Prosecution Office to act, given the audit reports are detailed, thorough and supported with complete documents, and therefore it is important for public prosecutors to reconsider them in dedicated and expert manner.

Broad debate should be initiated around the issue of defining SAO as constitutional category and introducing guarantees for its expertise and independence. It is important to further strengthen this institution’s human capacity, with a view to address challenges in relation to much needed performance audits. Strict sanctions should be stipulated for non-compliance and failure to act upon SAO’s recommendations, while the Public Prosecution Office must give priority to SAO’s reports.
5. Ombudsman Office

The Ombudsman is established by the Constitution to protect constitution- and law-guaranteed rights of citizens when they have been violated by state administration bodies and other bodies and organizations with public authorizations.

5.1 Description of competences

The Ombudsman monitors respect for and protection of human rights, conducts relevant research, organizes educational activities, timely and regularly informs the public, cooperates with the civil society, international organizations and the academia, and initiates alignment of domestic legislation with international and regional human rights standards. Furthermore, the Ombudsman works on prevention of torture and other cruel, inhuman or degrading treatment or punishment, by conducting regular and unannounced visits to detention facilities. Special fields of interest include protection of the rights of children and persons with disabilities, protection against torture and other inhumane treatment at detention facilities, non-discrimination and equitable representation, as well as compliance with the right to trial within reasonable time and protection against impartial and irresponsible performance of judicial authorities.

In particular, the Ombudsman acts upon complaints, but could also initiate ex-officio proceedings, when deemed necessary. It is obliged and entitled to collect all facts and evidence that are of significant importance to take decisions upon complaints, which state bodies are obliged to provide. After having established that state authorities violated constitution and law-guaranteed rights of complainants, the Ombudsman is entitled to:

- make recommendations, proposals, opinions and indications aimed to eliminate violations established;
- propose repeated proceedings, in compliance with the law;
- motion disciplinary or misdemeanour proceedings against officials or authorized officers; and
• motion criminal charges before competent prosecutors against officials or authorized officers, and actively participate in such proceedings with the right to make motions and opinions.

5.2 Performance of oversight functions

According to the Ombudsman’s systematization act, operations of relevant expert service, national prevention mechanism, civil oversight mechanism, separate departments and regional offices are performed by 99 catalogued job positions and 141 staff members. At the end of year, this institution employed only 79 staff members, including eight appointed officers, i.e. one ombudsman and seven deputy ombudsmen (three of which are based in Skopje and four are deployed at regional offices in Kumanovo, Strumica, Tetovo and Shtip).

The Ombudsman’s proceedings for protection of constitution- and law-guaranteed rights of citizens are initiated upon submission of complaints by individuals who believe their rights have been violated. In addition, the Ombudsman could initiate ex-officio proceedings.

Analysis of this institution’s annual reports provides the conclusion that the dominant number of proceedings is initiated upon submitted complaints compared to those initiated ex-officio, whose number is insignificant. Nevertheless, it should be noted that the number of ex-officio proceedings is marked by trend of increase, which could be indicative of greater proactivity on the part of the Ombudsman in human rights protection.

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55 Article 13 of the Law on the Ombudsman
Towards accountable and transparent public administration by means of functional oversight institutions

Table no. 8: Overview of complaints lodged

<table>
<thead>
<tr>
<th></th>
<th>2013</th>
<th>2014</th>
<th>2015</th>
<th>2016</th>
<th>2017</th>
<th>2018</th>
</tr>
</thead>
<tbody>
<tr>
<td>Complaints lodged</td>
<td>3.780</td>
<td>4.249</td>
<td>4.403</td>
<td>3.775</td>
<td>3.223</td>
<td>3.458</td>
</tr>
<tr>
<td>Change against the previous year (in %)</td>
<td>-</td>
<td>+12%</td>
<td>+4%</td>
<td>-14%</td>
<td>-15%</td>
<td>+7%</td>
</tr>
<tr>
<td>Backlog complaints from the previous year</td>
<td>819</td>
<td>746</td>
<td>933</td>
<td>943</td>
<td>962</td>
<td>1.024</td>
</tr>
<tr>
<td>Anonymous complaints</td>
<td>10</td>
<td>6</td>
<td>9</td>
<td>10</td>
<td>12</td>
<td>20</td>
</tr>
<tr>
<td>Ex officio proceedings</td>
<td>20</td>
<td>27</td>
<td>31</td>
<td>37</td>
<td>49</td>
<td>49</td>
</tr>
<tr>
<td>Total complaints reconsidered:</td>
<td>4.599</td>
<td>4.995</td>
<td>5.336</td>
<td>4.718</td>
<td>4.185</td>
<td>4.482</td>
</tr>
</tbody>
</table>

Throughout the analysed period, the number of complaints lodged to the Ombudsman varies and is marked by a mild decrease. When acting upon complaints, the Ombudsman could decide not to initiate proceedings, discontinue or suspend proceedings or initiate proceedings to establish violation of certain human rights and impose relevant legal actions. Whether and to what extent the Ombudsman is effective in acting upon complaints could be assessed on the basis of the share of unresolved cases (backlog rate). A cause for concern is the trend of increasing backlog cases, which could be attributed to insufficient human resources disposed by this institution.

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56 Data were taken from the Ombudsman’s annual reports published on its official website.
57 Article 19 of the Law on the Ombudsman
58 Share of backlog cases is calculated as quotient of the number of unresolved cases and total number of active cases in the current year.
### Table no. 9: Data on completed cases

<table>
<thead>
<tr>
<th></th>
<th>2013</th>
<th>2014</th>
<th>2015</th>
<th>2016</th>
<th>2017</th>
<th>2018</th>
</tr>
</thead>
<tbody>
<tr>
<td>Total cases completed</td>
<td>3,853</td>
<td>4,062</td>
<td>4,393</td>
<td>3,756</td>
<td>3,161</td>
<td>3,230</td>
</tr>
<tr>
<td>Non-initiation of proceedings(^\text{59})</td>
<td>948</td>
<td>878</td>
<td>880</td>
<td>663</td>
<td>591</td>
<td>688</td>
</tr>
<tr>
<td>Completed proceedings</td>
<td>2,905</td>
<td>3,184</td>
<td>3,513</td>
<td>3,093</td>
<td>2,570</td>
<td>2,542</td>
</tr>
<tr>
<td>Uncompleted cases</td>
<td>746</td>
<td>933</td>
<td>943</td>
<td>962</td>
<td>1,024</td>
<td>1,252</td>
</tr>
<tr>
<td>Backlog rate (in %)</td>
<td>16.22%</td>
<td>18.68%</td>
<td>17.67%</td>
<td>20.39%</td>
<td>24.47%</td>
<td>27.93%</td>
</tr>
</tbody>
</table>

Analysis of already completed proceedings allows insight in the number of cases in which violations were established to particular constitution- and law-guaranteed rights. According to available data, in the analysed period, the Ombudsman established violations in around 30% of completed proceedings (highest rate is observed in 2016 – 38.74%, while lowest rate is observed in 2018 – 26.41%).

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\(^{59}\) The Ombudsman shall not initiate proceedings upon complaints when: complaints are lodged as anonymous, unless it is a matter of general interest; complaints are incomplete and complainants have failed to complete them upon indications by the Ombudsman; according to complaint content, it is a matter of less significant case, which after relevant examination would not yield particular results; according complaint content, circumstances and accompanying facts and evidence, it is not a matter of violation of constitution-and law-guaranteed rights enjoyed by complainants or persons on whose behalf complaints were lodged on the part of state authorities referred to article 2 of this law; is not competent to take actions; more than one year has passed from the act or last decision taken by relevant bodies, organizations or institutions, unless it is assessed that complainants have failed to comply with the deadline due to justified reasons; and court proceedings are underway for the matter covered under complaints, unless it is a matter of situations referred to article 12, paragraphs 1 and 2 of this law.
Towards accountable and transparent public administration by means of functional oversight institutions

Table 10: Overview of cases in which violations were established

<table>
<thead>
<tr>
<th></th>
<th>2013</th>
<th>2014</th>
<th>2015</th>
<th>2016</th>
<th>2017</th>
<th>2018</th>
</tr>
</thead>
<tbody>
<tr>
<td>Completed proceedings(^{60})</td>
<td>2.905</td>
<td>3.184</td>
<td>3.513</td>
<td>3.093</td>
<td>2.570</td>
<td>2.542</td>
</tr>
<tr>
<td>Cases in which violations were established(^{61})</td>
<td>1.054</td>
<td>1.186</td>
<td>1.397</td>
<td>1.455</td>
<td>1.033</td>
<td>853</td>
</tr>
<tr>
<td>Discontinued proceedings (no violation)(^{62})</td>
<td>1.768</td>
<td>1.920</td>
<td>2.018</td>
<td>1.638</td>
<td>1.537</td>
<td>1.638</td>
</tr>
<tr>
<td>Cases resolved in other manner</td>
<td>73</td>
<td>72</td>
<td>35</td>
<td>11</td>
<td>1</td>
<td>0</td>
</tr>
<tr>
<td>Anonymous</td>
<td>10</td>
<td>6</td>
<td>9</td>
<td>10</td>
<td>12</td>
<td>20</td>
</tr>
<tr>
<td>Legal advice</td>
<td>/</td>
<td>/</td>
<td>54</td>
<td>61</td>
<td>57</td>
<td>51</td>
</tr>
<tr>
<td>Share of cases in which violations were established(^{63})</td>
<td>27.36%</td>
<td>29.20%</td>
<td>31.80%</td>
<td>38.74%</td>
<td>32.68%</td>
<td>26.41%</td>
</tr>
</tbody>
</table>

In cases it has established violations of constitution- and law-guaranteed rights, the Ombudsman is entitled to make recommendations, proposals, opinions and indications to eliminate violations identified, as well as to propose repeated proceedings, in compliance with the law.\(^{64}\) In cases when relevant authorities have acted upon requests, recommendations, opinions and indications, the Ombudsman establishes that proceedings are completed and immediately notifies complainants.\(^{65}\) However, in cases when relevant authorities have failed to inform the Ombudsman or have partially accepted its conclusions, requests, proposals, opinions, proposal or indications, the Ombudsman, by means of separate report, informs their immediately higher authority. Moreover, the

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\(^{60}\) The number of completed cases is taken from the Ombudsman’s annual reports. In some years, the annual reports indicate only the number of cases in which violations were established and the number of discontinued cases (2016 and 2017), while in other years it includes cases solved in other manner, anonymous proceedings and resolved legal advice.

\(^{61}\) This information concerns only cases in which violations were established and in which the Ombudsman has exhausted all law-stipulated possibilities, whereby the case is considered closed.

\(^{62}\) Article 23 of the Law on the Ombudsman: “Ombudsman shall discontinue or terminate proceedings upon complaints in cases when: after completion of proceedings it is established there are no violations of constitution- and law-guaranteed rights of complainants by authorities referred to in article 3 of this law; in the course of proceedings led before the Ombudsman, complainants initiated court proceedings; complainants do not show interest in further proceedings; complainants withdraw their complaints in the course of proceedings; complainants have died in the course of proceedings, unless their heirs request continuation of initiated proceedings; and complainants have exercised their rights covered under complaints in the meantime.”

\(^{63}\) This share is calculated as quotient of the number of completed cases in which violations were established and total number of cases in the current year.

\(^{64}\) Article 32 of the Law on the Ombudsman

\(^{65}\) Article 35 of the Law on the Ombudsman
Ombudsman is entitled to motion disciplinary or misdemeanour proceedings against officials or authorized officers, as well as to motion criminal charges before competent public prosecutors.

Table no. 11: Actions taken upon the Ombudsman’s intervention

<table>
<thead>
<tr>
<th></th>
<th>2013</th>
<th>2014</th>
<th>2015</th>
<th>2016</th>
<th>2017</th>
<th>2018</th>
</tr>
</thead>
<tbody>
<tr>
<td>Cases in which violations were established</td>
<td>1.054</td>
<td>1.186</td>
<td>1.397</td>
<td>1.455</td>
<td>1.033</td>
<td>853</td>
</tr>
<tr>
<td>Actions taken upon the Ombudsman’s intervention</td>
<td>931</td>
<td>1.114</td>
<td>1.238</td>
<td>1.358</td>
<td>970</td>
<td>647</td>
</tr>
<tr>
<td>Actions not taken upon the Ombudsman’s intervention</td>
<td>123</td>
<td>72</td>
<td>159</td>
<td>97</td>
<td>63</td>
<td>206</td>
</tr>
<tr>
<td>Share of cases in which actions were taken pursuant to the Ombudsman’s recommendations</td>
<td>88.33%</td>
<td>93.93%</td>
<td>88.62%</td>
<td>93.33%</td>
<td>93.90%</td>
<td>75.85%</td>
</tr>
<tr>
<td>Information submitted to line ministers</td>
<td>36</td>
<td>54</td>
<td>22</td>
<td>16</td>
<td>10</td>
<td>11</td>
</tr>
<tr>
<td>Information submitted to the government</td>
<td>5</td>
<td>1</td>
<td>0</td>
<td>5</td>
<td>1</td>
<td>2</td>
</tr>
<tr>
<td>Information submitted to other bodies and organizations</td>
<td>27</td>
<td>16</td>
<td>11</td>
<td>5</td>
<td>0</td>
<td>3</td>
</tr>
</tbody>
</table>

In that regard, the Ombudsman’s effectiveness could be assessed by analysing relevant shares of cases in which the authorities acknowledged and complied with its recommendations and opinions. According to available data, in majority of cases the authorities acted upon the Ombudsman’s intervention. Nevertheless, concerns are raised with 2018 data, whereby the authorities have not acted upon the Ombudsman’s intervention in one quarter of cases in which violations were established and this institution has exhausted all legal possibilities. In such cases, the Ombudsman duly informed immediately higher authorities, as well as the Public Prosecution Office. Moreover, the Ombudsman’s annual reports indicate shortcomings in processing of criminal charges motioned before the Public Prosecution Office.

5.3 Conclusions and recommendations

Similar to the State Administration Inspectorate, on annual basis the Ombudsman acts in high number of cases. Hence, in order to ensure its efficient operation this institution needs to be adequately staffed, with deputy ombudsmen and
expert staff members. Trend of increased number of backlog cases from the previous year is noted and is indicative of the need to enhance this institution’s human resources. Furthermore, penal policy for authorized officers at public administration bodies who fail to act upon the Ombudsman’s recommendations and opinions needs to be further strengthened.
6. Commission for Protection of the Right to Free Access to Public Information

Commission for Protection of the Right to Free Access to Public Information ensures publicity and transparency of institutions by protecting the right to free access to public information.

6.1 Description of competences

Commission for Protection of the Right to Free Access to Public Information is independent state authority with several competences related to the obligation of public administration bodies to demonstrate transparency and publicity in their operations. In that, particular importance is assigned to competences related to taking decisions upon appeals lodged against decisions and conclusions taken by information holders on rejecting information requests or discontinuing procedure on free access to public information and competences related to ensuing enforcement of the Law on Free Access to Public Information. This commission is established as collective body and is comprised of commission chair, deputy chair and three members, all of whom perform this office professionally, with term of office in duration of five years and the right to second mandate. Members of this commission are appointed and dismissed by the Parliament. It operates by means of holding sessions at which decisions are taken by means of majority vote from the total number of commission members.

Commission for Protection of the Right to Free Access to Public Information performs its oversight functions over public administration bodies and organizations, but in addition to taking decisions upon appeals lodged against information holders’ decisions and actions that prevent access to public information, it could also perform its functions by initiation of misdemeanour proceedings in compliance with Article 89, paragraph 2 of the Law on Misdemeanours. The Law on Free Access to Public Information stipulates a number of misdemeanours for authorized officers at information holders. Nevertheless, the commission is not misdemeanour body competent to take decisions in misdemeanour proceedings.
Towards accountable and transparent public administration by means of functional oversight institutions

It should be noted that on 24th April 2019, the Parliament adopted new Law on Free Access to Public Information, which will enter into effect in November 2019. In particular, the new law significantly improves and specifies obligations of information holders in ensuring access to public information and establishes completely new body, i.e. Agency for Protection of the Right for Free Access to Public Information, to replace this commission. This agency is established as autonomous and independent state authority and has the capacity of legal entity. Another important novelty is the fact that the agency will be assigned functions as misdemeanour body with competences to issue misdemeanour sanctions.

6.2 Performance of oversight functions

Although, to large extent, problems and shortcomings in implementation of the previous Law on Free Access to Public Information were a result of its incorrect enforcement in the practice or were a consequence of the commission’s insufficient capacity (human, institutional and financial), the law was also marked by significant shortcomings. In particular, key problems that affected law enforcement include absence of precise definition for the term “public interest” and “harm test”, as well as vague definition of exemptions from the right to free access to information. As noted earlier, serious shortcomings were identified in the fact that the commission was not awarded status of misdemeanour body that could directly issue sanctions to information holders that have acted contrary to underlying principles of the law.

The commission suffers from insufficient institutional capacity for execution of its competences, as stipulated in the Law on Free Access to Public Information. In particular, the Commission for Protection for the Right to Free Access to Public Information lacks capacity and budget funds to monitor compliance with proactive publication of information. Only 19^69 from the total of 28^70 job positions

66 “Official Gazette of RNM” no. 101 from 22.5.2019
70 Ministry of Information Society and Administration, Annual Report on 2018 Data from the Register of Public Sector Employees.
anticipated under its systematization act are recruited. Moreover, for long period of time, the commission operated only with its chair and one member, whereby it was not equipped to take decisions by majority vote from the total number of members, which hindered its effectiveness.

Table no.12: Statistical overview of CPRFAPI's performance

<table>
<thead>
<tr>
<th></th>
<th>2013</th>
<th>2014</th>
<th>2015</th>
<th>2016</th>
<th>2017</th>
<th>2018</th>
</tr>
</thead>
<tbody>
<tr>
<td>FOI requests lodged</td>
<td>4,907</td>
<td>4,551</td>
<td>4,902</td>
<td>7,365</td>
<td>9,905</td>
<td>9,423</td>
</tr>
<tr>
<td>Responses to FOI requests</td>
<td>4,501</td>
<td>4,090</td>
<td>4,557</td>
<td>7,073</td>
<td>9,307</td>
<td>9,115</td>
</tr>
<tr>
<td>Share of responded FOI requests</td>
<td>91.73%</td>
<td>89.87%</td>
<td>92.96%</td>
<td>96.04%</td>
<td>93.96%</td>
<td>96.73%</td>
</tr>
<tr>
<td>Appeals lodged</td>
<td>564</td>
<td>849</td>
<td>960</td>
<td>619</td>
<td>758</td>
<td>622</td>
</tr>
<tr>
<td>Backlog appeals from the previous year</td>
<td>26</td>
<td>42</td>
<td>25</td>
<td>28</td>
<td>14</td>
<td>480</td>
</tr>
<tr>
<td>Unresolved cases</td>
<td>4.61%</td>
<td>4.95%</td>
<td>2.60%</td>
<td>4.52%</td>
<td>1.85%</td>
<td>77.17%</td>
</tr>
<tr>
<td>Decisions on approving appeals</td>
<td>159</td>
<td>253</td>
<td>372</td>
<td>182</td>
<td>324</td>
<td>114</td>
</tr>
<tr>
<td>Decisions on rejecting appeals</td>
<td>20</td>
<td>126</td>
<td>63</td>
<td>60</td>
<td>55</td>
<td>10</td>
</tr>
<tr>
<td>Decisions on appeal’s inadmissibility</td>
<td>34</td>
<td>21</td>
<td>61</td>
<td>27</td>
<td>28</td>
<td>6</td>
</tr>
<tr>
<td>Conclusions to discontinue appeal proceedings</td>
<td>337</td>
<td>408</td>
<td>439</td>
<td>322</td>
<td>337</td>
<td>12</td>
</tr>
<tr>
<td>Administrative disputes initiated</td>
<td>41</td>
<td>18</td>
<td>77</td>
<td>12</td>
<td>22</td>
<td>5</td>
</tr>
<tr>
<td>Information holders</td>
<td>1,267</td>
<td>1,274</td>
<td>1,278</td>
<td>1,259</td>
<td>1,256</td>
<td>1,256</td>
</tr>
<tr>
<td>Reports submitted by information holders</td>
<td>996</td>
<td>916</td>
<td>898</td>
<td>1,250</td>
<td>1,197</td>
<td>963</td>
</tr>
<tr>
<td>Share of information holders that submitted reports</td>
<td>21.39%</td>
<td>28.10%</td>
<td>29.73%</td>
<td>0.71%</td>
<td>4.70%</td>
<td>23.33%</td>
</tr>
<tr>
<td>Misdemeanour proceedings initiated</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>8</td>
<td>0</td>
</tr>
<tr>
<td>Cases completed with settlement</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>4</td>
<td>0</td>
</tr>
</tbody>
</table>

According to the report methodology, track record of the Commission for Protection of the Right to Free Access to Public Information is assessed against its operation in relation to the right to motion misdemeanour proceedings in cases when information holders have acted contrary to the law.

In the analysed period, the commission initiated settlement proceedings for only eight authorized officers at information holders in cases of misdemeanours subject to sanctions under Article 45 of the Law, which stipulates fine in the amount of 500 to 800 euros in MKD counter-value for misdemeanours committed by public office holders or managers of information holders that have not developed annual reports on implementation of this law and failed to submit them to the commission in compliance with Article 37 of the Law. In particular, this misdemeanour concerns failure to comply with the law-stipulated obligation for development of annual report on implementation of this law and submission to the commission by 31st January in the current year, for the previous year. Only four (4) authorized officers at information holders responded to settlement invitations and the commission issued them misdemeanour payment orders together with relevant minutes on establishment of said misdemeanours. As regards the remaining four (4) authorized officers at information holders who did not respond to settlement invitations, the commission motioned misdemeanour proceedings before competent courts, all of which are pending resolution.72

Particularly worrying is the fact that, except for the years 2016 and 2017, more than one fifth of information holders have not submitted annual reports to the commission in spite of their law-stipulated obligation. Moreover, major backlog of cases is observed due to the commission’s inactivity in 2018.

6.3 Conclusions and recommendations

Previously identified problems in operation of the Commission for Protection of the Right to Free Access to Public Information resulted in the need for adoption of new Law on Free Access to Public Information in 2019. The new law is expected to address problems arising from the legal framework in place. Nevertheless, the new agency would need to be adequately staffed and equipped. It is of particular importance for this agency to issue misdemeanour sanctions against authorized officers at information holders that fail to comply

with their law-stipulated obligations. Only in doing so, the agency would be able to gain authority as key oversight institution in ensuring and guaranteeing public administration’s transparency and openness.

7. State Commission for Prevention of Corruption

SCPC is authorized to initiate proceeding before competent bodies for dismissal, deployment, replacement or application of other liability measures, as well as to motion criminal charges against elected and appointed officials and authorized officers at public administration bodies.

7.1 Description of competences

*Law on Prevention of Corruption and Conflict of Interests*[^73] adopted in January 2019 is the basic legislative act that regulates competences of the State Commission for Prevention of Corruption. This law introduced several novelties that, to some extent, changed criteria and procedure for appointment of members in the State Commission for Protection of Corruption and expanded its competences in regard to suppression and prevention of corruption. In addition, the new law integrates anti-corruption measures with prevention of conflict of interests, which were subject of regulation under separate laws.[^74] Term of office for commission member appointed under the previous legislation in effect was terminated when the new law entered in effect. New members of SCPC were appointed on 8th February 2019.

Given that subject of analysis under this document is the period 2013–2018, here we compare the composition, method of appointment and competences of this state commission in fighting corruption under the old and the new law. As regards commission composition, in addition to stricter criteria for

[^73]: “Official Gazette of RNM” no. 12/2019

appointment of commission members, the new law also increased transparency of the procedure for their appointment. Another important aspect is the fact that the new law stipulated more precise and expanded competences for the state commission in terms of monitoring legality in financing political parties and election campaigns. Also, it includes clear stipulations on the state commission’s authorizations to request data and information from competent institutions, legal entities and natural persons, needed to fully establish the actual situation. Moreover, it includes misdemeanour provisions for violations of law-stipulated obligations, which do not imply elements of criminal offence, but involve specific persons.

The State Commission for Prevention of Corruption act in ex-officio capacity or based on submitted reports. For the purpose of full establishment of the factual situation, the state commission could request data and information from competent institutions, legal entities and natural persons, all of which are obliged to provide such information within a deadline of 15 days. The state commission has direct electronic access to databases kept and maintained by other bodies and organizations. Based on data collected, the state commission takes decision to initiate proceedings before competent bodies for establishment of responsibility with authorized officers and to motion criminal charges in cases where it has acted.

7.2 Performance of oversight functions

Based on insight in data provided in the state commission’s annual reports for the period 2013 – 2016, it could be noted that there is serious decrease in the number of reports submitted, as a result of citizens’ decreased trust in this mechanism, as well as poor track record of the state commission, having in mind that in the period 2015 – 2018 there are no information available whether this commission initiated any ex-officio proceedings. In this period, vast portion of SCPC’s work is reduced to acting in cases that concern politics and the elections.

Table no.13: Overview of the State Commission for Prevention of Corruption’s operation in the period 2013 - 2016

<table>
<thead>
<tr>
<th></th>
<th>2013</th>
<th>2014</th>
<th>2015</th>
<th>2016</th>
</tr>
</thead>
<tbody>
<tr>
<td>Reports made</td>
<td>201</td>
<td>141</td>
<td>124</td>
<td>63</td>
</tr>
<tr>
<td>Ex-officio actions</td>
<td>27</td>
<td>17</td>
<td>N/A</td>
<td>N/A</td>
</tr>
<tr>
<td>Related to elections</td>
<td>2.615</td>
<td>1.356</td>
<td>/</td>
<td>2.335</td>
</tr>
<tr>
<td>Total cases under reconsideration</td>
<td>3.119</td>
<td>426</td>
<td>N/A</td>
<td>277</td>
</tr>
<tr>
<td>Resolved cases</td>
<td>2.815</td>
<td>1.544</td>
<td>137</td>
<td>2.444</td>
</tr>
<tr>
<td>Area: corruption in public authorizations</td>
<td>68</td>
<td>57</td>
<td>41</td>
<td>24</td>
</tr>
<tr>
<td>Area: corruption in public interest</td>
<td>84</td>
<td>71</td>
<td>41</td>
<td>48</td>
</tr>
<tr>
<td>Area: judiciary</td>
<td>35</td>
<td>31</td>
<td>23</td>
<td>18</td>
</tr>
<tr>
<td>Area: politics</td>
<td>2.615</td>
<td>1.351</td>
<td>1</td>
<td>2.325</td>
</tr>
<tr>
<td>Other cases</td>
<td>13</td>
<td>34</td>
<td>31</td>
<td>29</td>
</tr>
</tbody>
</table>

As regards possibility to motion criminal charges, very low number of such motions was submitted to the Public Prosecution Office (only 26 motions in the period 2013 – 2018). Data on outcome of criminal charges raised are available only for the period by 2016. To great extent, these charges have been rejected or the state commission has not been notified about proceedings pursued. Although the State Commission for Prevention of Corruption has motioned 16 initiatives for dismissals, only one person was dismissed from office.

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77 These cases are related to requests by means of which state authorities and other institutions seek SCPC’s opinions, suggestions and recommendations in relation to what actions they are allowed or not allowed to take during election campaigns.
### Table no.14: Overview of notifications to competent bodies

<table>
<thead>
<tr>
<th></th>
<th>2013</th>
<th>2014</th>
<th>2015</th>
<th>2016</th>
<th>2017</th>
<th>2018</th>
</tr>
</thead>
<tbody>
<tr>
<td>Reports received</td>
<td>201</td>
<td>141</td>
<td>124</td>
<td>63</td>
<td>76</td>
<td>89</td>
</tr>
<tr>
<td>Notification to PPO</td>
<td>7</td>
<td>7</td>
<td>2</td>
<td>3</td>
<td>5</td>
<td>2</td>
</tr>
<tr>
<td>Proceedings underway</td>
<td>6</td>
<td>6</td>
<td>2</td>
<td>3</td>
<td>/</td>
<td>/</td>
</tr>
<tr>
<td>Rejected criminal charges</td>
<td>1</td>
<td>1</td>
<td>/</td>
<td>/</td>
<td>/</td>
<td>/</td>
</tr>
<tr>
<td>Motion for dismissal from office</td>
<td>/</td>
<td>3</td>
<td>2</td>
<td>1</td>
<td>9</td>
<td>1</td>
</tr>
<tr>
<td>Proceedings are underway</td>
<td>/</td>
<td>2</td>
<td>2</td>
<td>1</td>
<td>/</td>
<td>/</td>
</tr>
<tr>
<td>Persons dismissed from office</td>
<td>/</td>
<td>1</td>
<td>/</td>
<td>/</td>
<td>/</td>
<td>/</td>
</tr>
</tbody>
</table>

#### 7.3 Conclusions and recommendations

The new legislation from January 2019 significantly improved the legal framework that governs operation of the State Commission for Prevention of Corruption. In the first several months from its appointment, the state commission’s new composition demonstrated great proactivity in taking actions, which is seen in the high number of ex-officio cases initiated, as well as those initiated upon public request. Such activity is contrary to what the State Commission for Prevention of Corruption was known for in the past period. Over a period of only four months, SCPC adopted and published 128 criminal decisions in cases in which it has acted and formed 18 cases related to nepotism in recruitment at state authorities and bodies. Nevertheless, it would be of crucial importance to see whether this momentum will continue and yield long-term effects and whether the Public Prosecution Office will adequately investigate and process criminal charges motioned by SCPC.

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78 Communication from SCPC no. 03-106/2 from 30.1.2019.


80 State Commission for Prevention of Corruption, Public announcement 25.4.2019. Available at: https://www.dksk.mk/index.php?id=19&tx_news_pi1%5Bnews%5D=540&tx_news_pi1%5Bcontroller%5D=News&tx_news_pi1%5Baction%5D=detail&cHash=4cfa0b33f82b85ba1a0ec9c124b10c3f.
8. Law Enforcement Agencies (Ministry of Interior and Public Prosecution Office)

Oversight functions of police services at the Ministry of Interior and the Public Prosecution Office over public administration bodies arise from their competences to investigate and initiate proceedings for establishment of criminal responsibility with public office holders or civil servants who have committed criminal offences when performing their official tasks and duties.

8.1 Description of competences

Criminal responsibility is established when managers or civil servants at public administration bodies have committed criminal offences, as stipulated in the Criminal Code. Due to the nature of criminal offences as the most serious forms of unlawful acts, they are liable to most severe consequences and sanctions, including imprisonment sentences. Criminal responsibility is regulated under the Criminal Code of RNM, while the Law on Criminal Proceedings governs procedures for its establishment.

The term official, when appearing as criminal offender, is clearly defined under Article 122 of the Criminal Code, and enlists individual offices and job positions. Hence, the Criminal Code treats the following categories as officials relevant to the subject matter of this report:\[81\]

- President of the Republic of North Macedonia, appointed ambassadors and other representatives of RNM deployed abroad and persons appointed by the President;

- elected or appointed officials at and by the Parliament, the Government, state administration bodies, courts, public prosecution offices, Judicial Council, Council of Public Prosecutors and other bodies and organizations that perform certain expert, administrative and other activities falling within rights and duties of the republic, local self-government units, and persons performing permanent or temporary offices at these bodies and organizations;

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\[81\] Article 122 of the Criminal Code enlists other categories of officials and authorized officers, for example authorized officers of associations, foundations, etc., but due to the fact that they do not hold public office and authorizations, they are irrelevant for this report.
Towards accountable and transparent public administration by means of functional oversight institutions

• civil servants performing expert, normative and legal, executive, administrative and supervision, and administrative matters in compliance with the Constitution and the laws;

• authorized officers at legal entities who, by law or by other regulations enacted on the basis of laws, are assigned public authorizations and when they perform their offices as part of such authorizations; and

• persons performing certain offices on the basis of authorizations assigned to them by law or other regulations adopted on the basis of laws.

Criminal offenses committed by officials (not related to security services) are enlisted in Chapter XXX of the Criminal Code, as criminal offenses against public office and duty:

• abuse of public office and duty (art. 353);

• misconduct in performance of public office (art. 353-c);

• embezzlement in performance of public office (art. 354);

• defraud in performance of public office (art. 355);

• pursuing self-interest in performance of public office (art. 356);

• taking bribes (article 357);

• illegal acquisition and concealment of property (article 359-a);

• abuse of state, official or military secret (article 360-a);

• falsifying official documents (article 361).

This report focuses on the Ministry of Interior, i.e. the Bureau of Public Security, and the Public Prosecution Office. Bureau of Public Security is organizational unit within the ministry tasked with police affairs. The police are integral part of the ministry, whereby policing work is performed by police officers. One of the basic functions entrusted to the police is to prevent and detect criminal offences and take measures to prosecute perpetrators thereof.

Police officers from the Ministry of Interior who are working on detection of criminal offences are also referred to as judicial police in the meaning of the Law on Criminal Proceedings (art. 21). The judicial police take measures and actions, ex-officio or upon orders from public prosecutors, to detect and investigate criminal offences, prevent further consequences from criminal
offences, apprehend and report perpetrators thereof, secure evidence, as well as other measures and activities that are considered necessary for unhindered performance of criminal proceedings.

The judicial police perform its work upon orders from competent public prosecutors. In that, they are held accountable before competent public prosecutions for their actions taken in compliance with provisions from this law. Judicial police commanders and officers are obliged to perform tasks they are assigned. Judicial police officers cannot be reassigned from tasks assigned in relation to investigating criminal offences, except by means of decision from competent public prosecutors (art. 51). For the purpose of criminal prosecution, public prosecutors manage pre-investigation proceedings and dispose with resources of the judicial police.

After having received criminal reports or obtaining knowledge about criminal offences that are prosecuted ex-officio, the police are obliged to take all measures necessary to identify perpetrators of said criminal offences, in order to prevent them and their accomplices to evade justice or flee the state, discover and secure evidence and items that could serve as evidence, and collect all notifications that could be useful for successful criminal proceedings, under guidance and control of the Public Prosecution Office.

8.2 Performance of oversight functions

Providing complete answer to the question whether and to what extent law enforcement agencies are effective in discovering and prosecuting perpetrators of criminal offenses who are officials at public administration bodies and organization is complex. Data on criminal offences against public office and duty are available only after they have been reported. Due to their nature, these offences often occur away from the public eyes and damages they inflict are not easily and immediately noticed. In addition, the state appears as the damaged party in most of these cases and not natural persons or legal entities which would notice damages and report said criminal offences more easily. However, in spite of this challenge that should be taken into account, efficiency and effectiveness of law enforcement agencies could be assessed against two indicators, as follows:
1. share of accused persons in total number of reported perpetrators (prosecution rate);

2. share of convicted persons in total number of accused perpetrators (conviction rate).

Criminal offences can be reported by filing criminal charges at the Ministry of Interior and the Public Prosecution Office. In 2018, the Ministry of Interior was presented with 274 reports on criminal offences committed by 454 perpetrators. The fact that the number of reported perpetrators is higher than the number of criminal offences suggests that on average more than one person participated in perpetration of these offences. However, data on submitted reports are insufficient to calculate above-defined indicators.

<table>
<thead>
<tr>
<th>Table no.15: Reports submitted to MoI on criminal offences defined as abuse of public office and duty in the period 2013 - 2018</th>
</tr>
</thead>
<tbody>
<tr>
<td>2013</td>
</tr>
<tr>
<td>---</td>
</tr>
<tr>
<td>Criminal offences</td>
</tr>
<tr>
<td>Perpetrators</td>
</tr>
</tbody>
</table>

More detailed overview on processing reported persons is provided by official data from the State Statistical Office, which collects and publishes data on perpetrators of criminal offences on the basis of pre-defined methodology.

<table>
<thead>
<tr>
<th>Table no.16: Statistical overview of the number of reported, accused and convicted perpetrators of criminal offences against public office and duty (Chapter XXX of the Criminal Code)</th>
</tr>
</thead>
<tbody>
<tr>
<td>2013</td>
</tr>
<tr>
<td>---</td>
</tr>
<tr>
<td>Reported</td>
</tr>
<tr>
<td>Accused</td>
</tr>
<tr>
<td>Convicted</td>
</tr>
</tbody>
</table>

Several conclusions could be inferred on the basis of these data. First, there is a trend of decreasing number of reported, accused and convicted perpetrators of criminal offences against public office and duty. However, this decreasing

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trend does not necessarily imply decreased criminality rate for these offences. Moreover, the trend on decreasing number of reported, accused and convicted perpetrators is also observed in relation to all criminal offences and is therefore consistent with statistical data on the overall criminality rate kept and maintained by MoI.84

Chart no. 1: Criminal offences against public office and duty

Chart no. 2: All criminal offences

Prosecution rate

The prosecution rate used in this report is calculated as quotient of the number of accused persons and total number of reported perpetrators of criminal offence under Chapter XXX of the Criminal Code, expressed as percentage. This indicator allows analysis of the share of accused persons in total number of reported perpetrators of criminal offences. Hence, prosecution rate in the period 2013 - 2017 stands at 36.28%. In other words, it means that charges are raised against 36 from 100 reported perpetrators. This piece of information is not sufficient for conclusions to be inferred. However, when compared against the prosecution rate for other groups of criminal offences, it provides a certain perspective.8586

Chart no. 3:
Prosecution rates per type of criminal offences in the period 2013 - 20178586

86 High prosecution rate for criminal offences against life and body is a result of the manner in which the State Statistical Office keeps this type of statistics. Hence, statistics on accused perpetrators for this type of criminal offences kept by the State Statistical Office also include persons against whom litigation cases are motioned (high share of which concern criminal offences defined as physical attack), and these perpetrators are not covered by criminal charges and are not reported as perpetrators.
According to these data, only two groups of criminal offences (against security and property) are marked by lower prosecution rates. This indicates to the fact that vast portion of reports related to criminal offences against public office and duty are rejected or result in insufficient evidence secured after they have been processed and investigated.

**Conviction rate**

The conviction rate is calculated as quotient of the number of convicted persons and total number accused perpetrators for criminal offences under Chapter XXX of the Criminal Code. This information allows assessment of successful indictments motioned by the Public Prosecution Office that have resulted in conviction court rulings. In the period 2013–2017, the conviction rate stands at 64.75%. Compared against other types of criminal offences, this conviction rate is the lowest rate observed.

**Chart no. 4: Conviction rates according to type of criminal offences in the period 2013 - 2017**

These data are indicative of certain difficulties in operation of the Public Prosecution Office related to filing indictments that are not supported by sufficient evidence and failing to adequately defend indictments in court proceedings. Nevertheless, low prosecution and conviction rates for criminal offences against public office and duty are consequence of cumulative effects created by several
factors. First of all, it is a matter of complex criminal offences that necessitate evidence on multitude of facts that are commonly difficult to prove. Furthermore, the Public Prosecution Office is facing objective lack of human and technical capacity, thereby making it difficult to collect evidence. However, it should be noted there is evident lack of will to fight corruption (which is often demonstrated by perpetration of criminal offences against public office and duty), which has led to the need for establishment of the so-called Special Prosecution Office.

**Types of sanctions issued**

Insight into data on types of sanctions issued paints a picture about the penal policy against this type of criminal offences.

<table>
<thead>
<tr>
<th>Criminal offence</th>
<th>Convicted</th>
<th>Sanctions - total</th>
<th>Alternative measures - total</th>
</tr>
</thead>
<tbody>
<tr>
<td>Misconduct in performance of public office</td>
<td>18</td>
<td>1</td>
<td>17</td>
</tr>
<tr>
<td>Violation when guarding state borders</td>
<td>1</td>
<td>-</td>
<td>1</td>
</tr>
<tr>
<td>Abuse of public office and duty</td>
<td>62</td>
<td>8</td>
<td>54</td>
</tr>
<tr>
<td>Defraud in performance of public office</td>
<td>4</td>
<td>1</td>
<td>3</td>
</tr>
<tr>
<td>Taking bribes</td>
<td>3</td>
<td>1</td>
<td>2</td>
</tr>
<tr>
<td>Giving bribes</td>
<td>3</td>
<td>-</td>
<td>3</td>
</tr>
<tr>
<td>Falsifying official documents</td>
<td>2</td>
<td>-</td>
<td>2</td>
</tr>
<tr>
<td>Other criminal offenses against public office and duty</td>
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Data presented in the table above shows that in most cases that involve criminal offences against public office and duty competent courts have resorted to issuance of alternative measures instead of criminal sanctions. Hence, in as many as 88.54% of cases, competent courts have issued alternative measures instead of criminal sanctions. Compared to other types of criminal offences, this share is particularly high. There is discrepancy between other criminal offences amounting to so-called crimes of economic nature (for example, criminal offences against public finances), where sanctions, and not alternative measures, have been imposed in almost 90% of cases.
Special Prosecution Office and criminal offenses against public office and duty

Special Prosecution Office is specific body tasked with criminal prosecution, which is operationally separated and independent from the Public Prosecution Office. The Special Prosecution Office was established in 2015 and tasked to prosecute criminal offences related to and arising from the contents of illegal interception of communications. For the purpose of this report, it is important to analyse its operations in relation to criminal offences against public office and duty. In that, the Special Prosecution Office has not initiated criminal proceedings against criminal offenses under Chapter XXX of the Criminal Code on the basis of direct observations or by means of public knowledge. As regards the share of criminal reports it was presented with in respect to criminal offences under Chapter XXX of the Criminal Code, in 2016 it was 7.7%, in 2015 5%, and in 2018 it was 5.9%. As regards court rulings, one first-instance conviction ruling was issued in 2017 for criminal offence “falsifying official documents”, while in 2018 competent courts adopted two first-instance rulings against criminal offences “abuse of public office and duty”, as stipulated under Article 353, paragraph 5 of the Criminal Code.

8.3 Conclusions and recommendations

The observed trend on decreasing number of reported, accused and convicted perpetrators of criminal offences against public office and duty cannot be interpreted as reduced criminality rate. There are evidently low prosecution and conviction rates for criminal offenses against public office and duty compared to other groups of criminal offences. Reasons thereof are many and various. Criminal offenses against public office and duty are of complex nature and necessitate evidence for a multitude of facts that are commonly difficult to prove. The Public Prosecution Office is facing objective lack of human and technical capacity that makes difficult to collect and secure evidence. However, due consideration should be made of the lack of will and decisiveness in combating this type of crime. On the other hand, penal policy against these offences raises many dilemmas. In as many as 88.54% of cases, competent courts have issued alternative measures instead of criminal sanctions. Compared to other types of criminal offences, this share is particularly high. There is discrepancy between
other criminal offences amounting to so-called crimes of economic nature (for example, criminal offences against public finances), where sanctions, to great extent, fall within the scope of sanctions imposed for criminal offences against public office and duty and have been issued in almost 90% of cases, instead of alternative measures.
4. Conclusions and Recommendations
1. Small number of oversight institutions demonstrates insufficient transparency in disclosing and publishing data on performance of their respective oversight functions. Due to the nature of their primary activity, which includes oversight and control over other public administration bodies, these institutions should serve as role models in terms of demonstrating high level of transparency. Particular concerns are raised with the fact that the government did not disclose requested information about the number of appointed and dismissed officials, although it is indisputably in possession of such information, having in mind the fact that appointment and dismissal of public officers and managers falls within its competences. In the case of the Public Prosecution Office, this report observed lack of data in formats that are easily browsed and analysed. Nevertheless, praise is due to other analysed oversight institutions that published detailed information on their official websites and as part of their annual reports.

2. Lack of human and technical capacity was observed with all oversight institutions analysed in this document (except with the government). Particularly worrying is state-of-affairs observed at independent oversight institution, i.e. the Ombudsman, the Public Prosecution Office, the State Commission for Prevention of Corruption and the Commission for Protection of the Right to Free Access to Public Information. Performance of oversight functions by means of supervision, processing complaints and reports, and conducting investigations is labour-intensive and requires expert staff. Due to the importance assigned to oversight functions in ensuring accountability and transparency of the public administration, special priority should be given to requests made by these institutions to adequately recruit job positions planned under their respective systematization acts.

3. Oversight mechanisms are not immune to political processes that could seriously bring under question their ability to ensure adequate checks-and-balances independently from political events and developments. In this regard, special concerns are raised in relation to SCPC, CPRFAPI and the Public Prosecution Office. In the period 2017-2018, i.e. during the transfer of government, SCPC and CFRFAPI were almost completely non-functional. On the other hand, during the analysed period and irrespective of reasons, the Public Prosecution Office proved incapable to investigate and prosecute criminal offences, on the grounds of reasonable suspicions, perpetrated by senior state officials. Efforts are needed to ensure legal, institutional and financial framework that would guarantee compete independence of oversight institutions, irrespective of political developments in the state.
4. All oversight institutions should dispose with mechanisms to sanction obstruction of their operation and non-compliance with their decisions by entities that are subject of oversight/control. In their annual reports, some oversight mechanisms duly noted obstructions they are facing. Hence, the Ombudsman regularly identifies public administration bodies that prevent its operation and work. Significant share of information holders do not comply with their law-stipulated obligation to submit annual reports to CPRFAPI. Such actions are indicative of gross disrespect for oversight institutions which, inter alia, is due to low probability for being sanctioned. All and any acts of obstructing operation of oversight institutions need to be defined as misdemeanours and liable to sanctions issued by relevant oversight institutions in the capacity of misdemeanour bodies.

5. Establishing criminal responsibility with public office holders remains the weakest link in the system of oversight institutions. High portion of criminal charges motioned by these institutions remains trapped in the labyrinths at the Public Prosecution Office. Evidence in support thereof is found in low prosecution and conviction rates on criminal offences against public office and duty, compared to other types of criminal offences. As regards the small number of duly processed and convicted cases, they commonly result in issuance of alternative measures instead of imprisonment sentences, which brings under question attainment of criminal prevention as one of purposes pursued by the penal policy. The Public Prosecution Office must give priority to processing criminal charges motioned by oversight institutions which dispose with relevant expertise in particular areas to recognise grounds of reasonable suspicions that particular criminal offences have been committed. In addition, the Public Prosecution Office must actively cooperate with oversight mechanisms in investigating and prosecuting criminal offences against public office and duty. The Public Prosecution Office’s organizational setup should include specialized department with prosecutors profiled in prosecuting criminal offences against public office and duty.
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