



Efficient public procurement complaints mechanism and the role of an independent review body: International good practices and roadmap for Lebanon

Country experience: Romania

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The Review body guarantees effective enforcement of public procurement rules

- Stay independent;
- Work to support a good compliance;
- Monitor the compliance trend;
- Use compliance data to improve the effectiveness of enforcement.





Legal framework

- Law 98/2016 on public procurement – general guidelines on award;
- Law 99/2016 on procurement in water, energy, transport and postal services;
- Law 100/2016 on concessions;
- Law 101/2016 on remedies, National Council for Solving Complaints.



The Romanian institutional system

The National Agency for Public Procurement – regulating (legislative function) body, providing advisory and operational support, ex-ante (tender documentation and tenders' evaluation process) and ex-post verifications, monitoring and international representation;

The National Council for Solving Complaints – non-judiciary, administrative first instance solving complaints lodged against public procurement procedures;

The Authority for the Digitization – operator of the Electronic System for Public Procurement (ESPP).

Administrative branch of justice: the courts at the level of each county/the contentious-administrative sections (Tribunal County) – ex-ante/post phase;

The Romanian Court of Accounts/The Audit Authority;
The Competition Council.



The National Council for Solving Complaints

First instance review

- administrative/non-judiciary institutional body;
- first instance;
- fast track service of solving complaints against public procurement procedures;
- purpose: guarantee compliance with procurement legislation;
- roles: remediation; cancel illegal procedures;
- independence: not subordinated;
- competence: annul documents, annul awards, require measures.
- annually reporting to the Romanian Parliament only.





N.C.S.C. members' professional profile:

- > 10 years' professional experience
legal, technical, economic field;
- > 3 years' procurement experience;
- members: special status civil servants,
assigned by PM after winning public contest.

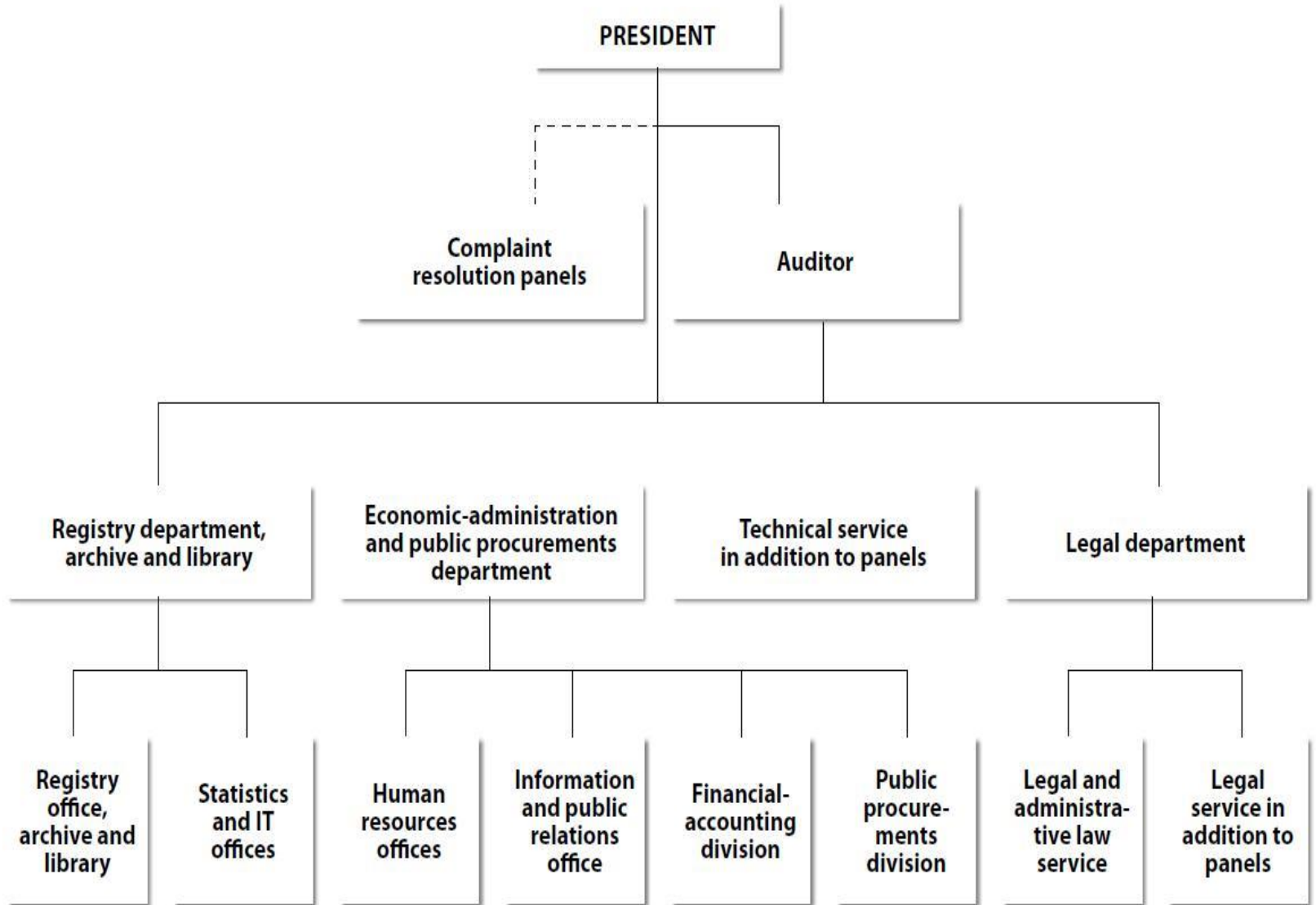
N.C.S.C. president:

- law degree > 12 years;
- minimum 3 years as a member;
- chosen among members by secret, absolute
majority vote;
- three years' mandate.



N.C.S.C. FLOW CHART

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Solving of public procurement complaints Romanian Law 101/2016 – article 2 (1)

„Any person considers being harmed in a right or legitimate interest by a contracting authority’s act or by omission to solve the claim within the time limit, may request the annulment of the act by obliging the contracting authority to issue an act or to enact remedial measures, recognition of the claimed right or legitimate interest through administrative – judicial or judicial review, according to the provisions of the present law”.



Fees & Follow up

Romanian legislation

1. *Initially – no fee for lodging complain;*
2. *Good conduct guarantee - repealed*
3. *Bond submission – by law requested – article 61¹*
4. Bond value: 2% out of a specific value with a cap





Acknowledgments

„The Romanian government, however considers the number of bid protests to be too high. Importantly, it is argued that “frivolous” or “abusive” bid protests are very common in Romania and that economic operators frequently try to delay the conclusion of a contract by misusing the bid protest system”.

* The World Bank Final report: Methods to reduce the number of review procedures in public procurement in Romania – review of the draft public procurement remedies law - 2015.



Timelines submitting a complaint

JOUE threshold related:

10 days – above the threshold;

7 days – below the threshold;

Not submitted within the time limits - complaint is overdue.

Timelines solving a complaint

General rule – within 20 days after tender file submission (+10 days extension if needed);

Common law legal exemption – 10 days;

Crossing the timeline triggers disciplinary action;

Claims against the N.C.S.C.'s decisions to be solved by Court of Appeals – 45 days.



NCSC Subject matter jurisdiction

- Over the subject matter described in the complaint only;
- No ex - officio legal competencies;
- Direct awards - decline jurisdiction to the tribunal county.
- **Suspensive effect** – decision to suspend the awarding procedure;
- N.C.S.C. procedure – written based.





Second instance review

- Claims against NCSC decisions to be submitted to the Court of Appeals (contentious-administrative sections);
- Designated court of appeal - correlated with contracting authority location;
- Court of appeal decisions: final, conclusive, binding for all.



Talking Portal



- designed by a web technology portal based;
- document management facilities;
- all documents and correspondent activities traceable on the web platform.



Challenges – Institutional level

- Moving toward a new legislation would generate distortions for the public procurement process (contracting authorities (CA)/entities & economic operators (EO) - *Ensure time to digest the new law.*
- Synchronizing primary legislation with secondary one is a must. If not, a large number of public procurement procedures may be altered and confusion among CA and EO will appear - *Delays and cost increase to be expected.*
- Definition enunciated by law can't be exhaustive, need to corroborate with specific legal norms.
- Terms of reference - *cross check with other public institutions involved.*
- *Institutional cooperation is mandatory.*





Challenges – Operational level

- Dealing with rapid interim measures;
- Panel hearings;
- Confidentiality;
- Disclosure vs. Non Disclosure;
- Dealing with settled matters.



Measures to cope better with complaints

- The unification of administrative and jurisdictional practice;
- Ensure a user – friendly access to case law information;
- Best practices guide to be available;
- Design further resilient solutions.



