

Support to State Reorganisation

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ENHANCING CONTROL SYSTEMS INCLUDING LEGAL MODIFICATIONS FOR APPLICATION OF DISCRETIONARY RIGHTS IN LICENSING AND EMPLOYMENT

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GLOSSARY OF ACRONYMS

B-IEP	B-Integrated permits
CPH	Centers for Public Health
DUP	Detailed urban plan
DW	Drinking water
EC	European Commission
ECHR	European Court of Human Rights
EIA	Environmental impact assessment
EPR	Environmental Performance Review
ERC	Energy Regulatory Commission
GUP	General urban plan
HIF	<u>Health Insurance Fund of Macedonia</u>
ILO	International Labor Organisation
IPH	Institute of Public Health
LSWP	Law on setting prices for water services
MoEPP	Ministry of Environment and Physical Planning
MoH	Ministry of health
MKD	Macedonian denar
OECD	Organization for Economic Co-operation and Development
OSH	Occupational Safety and Health
PAR	Public Administration Reform
PUC	Public Utilities Companies
SAO	State Audit Office
SEI	State Environment Inspection



EXECUTIVE SUMMARY

This Analytical report on Enhancing control systems including legal modifications for application of discretionary rights in licensing and employment includes 3 areas as it is stated in the ToR: “Legislation framework related to employment - not only on the legislation that covers employment of the public administration, but also different types of employments such in sector education, health, culture etc.; Wider scope of legislation that regulate issuing different types of licenses, permissions, especially concerning ecology (licenses for water regulation, constructions, landfills etc.) and Legislation that provides individuals rights and responsibilities of the citizens (taxes, legal property relations, etc)”. In this sense, the structure of the Analytical Report follows requirements from the ToR. After the Introduction the second part gives a General description of the Legal and Institutional framework of Oversight, Inspections and supervision in North Macedonia. The third part is dedicated to the Overview of the Legal framework, Oversight and control mechanism in Environment, Urban Planning, Construction and in Employment (in Education, Culture and Health). For each of these topics; findings, risks and recommendations are presented. The fourth part present General Recommendations. The analysis is based on Screening legislation and Mapping Risks Analysis. This work has been done with specific Tables presented in Annexes.



1. INTRODUCTION

This report is structured in four parts. The first part is an Introduction with key principles in relation to discretionary powers and in relation to inspections and control mechanisms. The second part presents a General description and Institutional framework of Oversight, Inspections and Supervision in North Macedonia. The third part is dedicated to an Overview of the Legal Framework, Oversight and control mechanism in the area of Ecology (environment protection, Urban planning, Construction) and in Employment (public administration, education, health, culture). The fourth part presents General Recommendations. Screening and mapping of Laws with relation of articles to other Laws, comments and risk analysis are presented in Annexes with two colors: red indicates high risks and orange medium risks.

Methodology

The Methodological approach is based on requirements from the ToR, namely following activities:

- Activity 2.1 Development of proposals for enhancing control systems, including legal modifications,
 - 2.1.1 Analytical report on corruption risks and discretionary powers,
 - 2.1.3 Determining deadlines for applying discretionary powers,
 - 2.1.4 Draft amendments of current legal provisions unintentionally leaving space for discretionary,
 - 2.1.5 Draft amendments of material laws to ensure supervision of and sanctions on exercise of discretionary powers,
 - 2.1.6 Training sessions for officials,
 - 2.1.7 Stakeholder conference,
- Activity 2.3: Recommendations and guidelines for integration of discretionary powers into institutional system allowing internal audits and control,
 - 2.3.1 Screen remaining discretionary powers and propose recommendations on integration of discretion into general flow of public administration,
 - 2.3.2 Draft guidelines on making discretionary powers subject to internal and external audits and controls.

Within the analysis, twenty-five Laws have been analyzed



<ul style="list-style-type: none"> • Law on inspectoral supervision • Law on misdemeanors • Law on administrative servants • Law on the Government • Law on Administrative general procedure • Law on administrative dispute • Law on housing • Law on the city of Skopje • Law on construction land • Law on implementation of the spatial plan • Law on prohibition and prevention of performing unregistered activity • Law on urban greenery • Law on Environmental Noise Protection • Law on nature protection • Law on waters • Law on quality of ambient air 	<ul style="list-style-type: none"> • Law establishing a state commission for decision-making in the second level in the field of inspection supervision and misdemeanor procedure • Law on the state inspectorate for environment • Law on proceedings with complaints and proposals • Law on use and disposal of state-owned items and municipal property items • Law on employees in public sector • Law on local self government • Law on the state ombudsman • Law on the organization and work of the bodies of the state administration • Law on expropriation
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In order to fulfill requirements from the ToR, tasks have been conducted using a Methodological approach based on a three-step approach as follow:

- **STEP 1:**

- A qualitative analysis has been done through desk analysis of relevant documents (Laws, by-laws, Strategies, analysis and reports from international organizations) and collection of data (statistics, etc.). The methodological approach was also based on identification of Key vulnerabilities analysis. Problem analysis, SWOT analysis). In addition, in this first Step interviews have been conducted with relevant officials in line ministries. Interviews. Interviews individually and in focus groups at central and local level. For interviews Questionnaires have been prepared and answers analyzed. During the first Step, Key Principles in relation to discretionary powers (Council of Europe) have been analyzed as well as key principles in relation to Inspections, Oversight, Supervision (OECD, etc.) and other Principles in relation to Public Administration Reform (SIGMA). Comparative analysis with other EU Members countries has also been conducted.
- Another important part of the first Step of the methodological approach is the Screening legislation process and Mapping risks:
 - Screening – Mapping of Legislation with identification of Risks has also been done (see Annexes)
 - Preparation of Screening Tables with Mapping Risks.

- **STEP 2:**

- During the second step, on the basis of identified vulnerabilities, the focus was on preparation of Findings, identification of Risks and Preparation of Recommendations. During this Step 2 drafting of this Analytical Report has been done (Findings, Risks and Recommendations are presented in this Report). In addition, a workshop has been organized in Ohrid from 18-20



October 2021 and Findings, Risks, Recommendations have been discussed with participants in an Interactive way during Work-groups. Then, on the basis of the Work-Group results some Findings, Risks and Recommendations have been revised.

- Drafting this Analytical Report
- **STEP 3:**
 - During the third Step, draft guidelines on making discretionary powers subject to internal and external audits and controls have been prepared and presented in another Report (in line with Activity 2.3.).



1.1. Key Principles and Guidance in Relation to Inspections and Control Mechanisms

The Council of Europe has developed certain standards and recommendations – which are soft law, i.e. a source of law without normative content so that no obligation can be conferred by it. In order to counteract the arbitrariness of the administrative authorities, these recommendations set up certain limits and guidelines for the exercise of discretionary powers by administrative bodies, make the behavior of such bodies more predictable and fair. The Standard recommendations of the Council of Europe consider the rules (principles) formulated by the Committee of Ministers of the Council of Europe, the European Commission for Democracy through Law (Venice Commission), and the European Court of Human Rights (ECHR) on the discretion of administrative authorities and judicial oversight of its exercise. The standards and recommendations of the various institutions of the Council of Europe have a coherent effect on national legal systems. With regard to the exercise of discretion by administrative authorities, these standards and recommendations are aimed at preventing arbitrariness on their part and excessive interference with human rights, based on the consideration to prohibit abuse of power.

The strategies of legal regulation of discretionary authority may be divided into two broad categories:

one is concerned with *participatory procedures* to ensure the representation of groups and interests;

the other concentrates on *developing a framework of legal principles* which shape and influence discretionary decisions.

The question of fair procedures in discretionary contexts has been in recent years of increasing concern in a lot of countries. There are limits on the capacity to regulate discretionary powers only by general legal norms, and that, accordingly, participatory procedures are important in influencing outcomes and in securing their legitimacy. In 1977, the Committee of Ministers of the Council of Europe adopted the first one of a series of recommendations in the field of general administrative law, **Resolution (77) 31** on the protection of the individual in relation to the acts of administrative authorities (later such documents started being referred to as recommendations).

Resolution (77) 31

Broad consensus concerning the fundamental principles which should guide the administrative procedures and particularly the necessity to ensure fairness in the relations between the individual and administrative authorities. The following principles apply to the protection of persons, whether physical or legal, in administrative procedures with regard to any individual measures or decisions which are taken in the exercise of public authority and which are of such nature as directly to affect their rights, liberties or interests (administrative acts). In the implementation of these principles the requirements of good and efficient administration, as well as the interests of third parties and major public interests should be duly taken into account. Where these requirements make it necessary to modify or exclude one or more of these principles, either in particular cases or in specific areas of public administration, every endeavor should nevertheless be made, in conformity with the fundamental aims of this resolution, to achieve the highest possible degree of fairness.

I - Right to be heard - 1. In respect of any administrative act of such nature as is likely to affect adversely his rights, liberties or interests, the person concerned may put forward facts and arguments and, in appropriate cases, call evidence which will be taken into account by



the administrative authority. 2. In appropriate cases the person concerned is informed, in due time and in a manner appropriate to the case, of the rights stated in the preceding paragraph.

II - Access to information - At his request, the person concerned is informed, before an administrative act is taken, by appropriate means, of all available factors relevant to the taking of that act.

III - Assistance and representation - The person concerned may be assisted or represented in the administrative procedure.

IV - Statement of reasons - Where an administrative act is of such nature as adversely to affect his rights, liberties or interests, the person concerned is informed of the reasons on which it is based. This is done either by stating the reasons in the act, or by communicating them, at his request, to the person concerned in writing within a reasonable time.

V - Indication of remedies - Where an administrative act which is given in written form adversely affects the rights, liberties or interests of the person concerned, it indicates the normal remedies against it, as well as the time-limits for their utilization

The resolution 77 (31) refers to measures or decisions (administrative acts) that are taken/adopted when exercising public powers and which, given their nature, directly affect the rights, freedoms, or interests of an individual. In fact, it defined procedural guarantees for a person within the framework of administrative proceedings (regardless of whether discretion has been exercised at all), such as: a) the right to be heard; b) access to information; c) assistance and representation; d) indication of motives; e) notification of methods of appeal (review). In “1980, the Committee of Ministers approved Recommendation № R (80) concerning the exercise of discretionary powers by administrative authorities”¹. The document contains a **definition of discretion**:

“a power which leaves an administrative authority some degree of latitude as regards the decision to be taken, enabling it to choose from among several legally admissible decisions the one which it finds to be the most appropriate”.

Or in other words: “a power that an administrative body may exercise with a degree of discretion when making a decision – that is, when such a body can choose from several legally permissible decisions what it considers best for given the circumstances”².

The document indicates also “**basic principles of an administrative authority, when exercising a discretionary power**”:

- | |
|---|
| 1.does not pursue a purpose other than that for which the power has been conferred; |
| 2.observes objectivity and impartiality, taking into account only the factors relevant to the particular case; |
| 3.observes the principle of equality before the law by avoiding unfair discrimination; |
| 4.maintains a proper balance between any adverse effects which its decision may have on the rights, liberties or interests of persons and the purpose which it pursues; |
| 5.takes its decision within a time which is reasonable having regard to the matter at stake; |
| 6. applies any general administrative guidelines in a consistent manner while at the |

¹ See <https://rm.coe.int/16804f22ae>

² Ibidem p.2



same time taking account of the particular circumstances of each case.

In addition to the principles of fair administrative procedure governing administrative acts in general as set out in **Resolution (77) 31**, the following principles apply specifically to the taking of administrative acts in the exercise of a discretionary power.

7. Any general administrative guidelines which govern the exercise of a discretionary power are:

- i. made public, or
- ii. communicated in an appropriate manner and to the extent that is necessary to the person concerned, at his request, be it before or after the taking of the act concerning him.

8. Where an administrative authority, in exercising a discretionary power, departs from a general administrative guideline in such a manner as to affect adversely the rights, liberties or interests of a person concerned, the latter is informed of the reasons for this decision. This is done either by stating the reasons in the act or by communicating them, at his request, to the person concerned in writing within a reasonable time

Concerning control mechanism:

9. An act taken in the exercise of a discretionary power is subject to control of legality by a court or other independent body. This control does not exclude the possibility of a preliminary control by an administrative authority empowered to decide both on legality and on the merits.

10. Where no time-limit for the taking of a decision in the exercise of a discretionary power has been set by law and the administrative authority does not take its decision within a reasonable time, its failure to do so may be submitted to control by an authority competent for the purpose.

11. A court or other independent body which controls the exercise of a discretionary power has such powers of obtaining information as are necessary for the exercise of its function.

Principles from the Council of Europe have been recognized in North Macedonia in the Law on general administrative procedure and in the Law on inspection supervision. The Table below presents principles set out in these two Laws.

Law on general administrative procedure
Principle of legality
Principle of proportionality
Principle of economy and efficiency of the procedure
Principle of equality, impartiality and objectivity
Principle of service orientation of public bodies
Principle of establishing material truth
Principle of hearing the parties
Principle of free evaluation of evidence
Principle of delegation of decision-making power
Principle of legal protection
Principle of active assistance to the party
Final administrative act
Approved Final administrative act



Main body to oversight the implementation of the law is MIOA and State administrative inspectorate (body of MIOA)

Law on inspection supervision
Principle of legality
Principle of protection of the public interest
Principle of equality, impartiality and objectivity
Principle of responsibility
Principle of material truth
Principle of hearing the subjects of the inspection
Principle of publicity
Principle of proportionality
Principle of prevention
Principle of subsidiarity

The main body to oversight the implementation of the law is MIOA and State administrative inspectorate (body of MIOA)

Concerning Principles mentioned above, they **have been embedded in the Macedonian Law on inspection supervision as follow:**

Principle of legality: obligation to perform in compliance with the Constitution, laws, ratified international contracts in compliance with the Constitution and other legislation adopted on the basis of law; **Principle of protection of the public interest:** public interest is the primary interest to be protected; **Principle of equality, impartiality and objectivity:** ensures for equality, impartiality and objectivity in procedure; **Principle of responsibility:** quests for professional and conscientious performance of the inspection and for the damage caused by their illegal action or illegal refusal to take appropriate action; **Principle of material truth:** provides ex officio duty to determine the factual situation and to present evidence in the inspection procedure; **Principle of hearing the subjects of the inspection:** auditor et altera pars; **Principle of independence:** within its powers and competencies, determined by this or another law, the inspector is independent in performing the inspection supervision and in undertaking the inspection measures determined by law; **Principle of publicity:** the procedure is public and additionally measures taken for the protection of life and health of people or property or for serious violations of the public interest are publicized on specific inspectorate web site; **Principle of proportionality:** when performing the inspection, the inspector undertakes inspection measures in accordance with the law, those that are necessary to eliminate the identified irregularities and shortcomings, to be most favorable for the subject of the inspection, taking care not to hinder the efficient functioning of the subject of the inspection and additionally when determining the inspection measures and the deadlines for elimination of the identified deficiencies, the inspector shall be guided by the severity of the deficiency, the harmful consequences caused to the public interest or the interest of third parties, as well as the time required for the subject of inspection to eliminate the identified deficiencies; **Principle of prevention:** primarily performs in a preventive function, and undertakes inspection measures when the purpose of the inspection cannot be achieved with the preventive function; **Principle of subsidiarity/substitution:** the rules within the Law for general administrative procedure are used unless there is other regulation within the Law for inspection or some other law.

When it comes to Inspections, five OECD key principles which should apply to all governments are:

- **Principle 1:** Governments should be able to demonstrate that in inspection authorities the



behaviours of their staff at all levels reflect a high level of ethics, reduce conflicts of interest and support disclosure where it is in the public interest.

- **Principle 2:** Governments should be able to demonstrate that their inspection authorities have robust HR policies in place and that they have been effective in reducing political interference, regulatory capture, corruption, inefficiency and that businesses are not afraid to complain about the way they have been treated.

- **Principle 3:** Governments should simplify the complexity and increase the efficiency of the regulatory landscape and reduce the cumulative impact of inspection authorities and their activity on businesses. A register or list of their authorities, identifying their functions, composition, activities and budget will help achieve this with coordinated strategies and cross-sectoral policies to reduce the volume of disparate inspections businesses receive.

- **Principle 4:** Governments should be able to demonstrate that improvements in outcomes have been achieved by the activity of their inspection authorities. In the absence of anything better, this should include the interim measure and basic benchmark demonstrating an improvement in compliance which will require a large element of advice, education and support.

- **Principle 5:** Governments should be able to demonstrate that for each and every inspection there is a valid reason for intervening which is either based on risk or intelligence. They should be able to show that they are free from political influence, corruption and personal gain.

General remarks on discretionary powers and control mechanisms

Discretion is a double-edged sword. Its undeniable utility does not take away its high nuisance potential. Its use is reassuring only in the presence of adequate mechanisms capable of preventing or eliminating the danger. The administrative system must therefore necessarily contain the supervisory mechanisms for the exercise discretionary power. The exercise of discretion is not immune from scrutiny. Several types of control are possible. It may be the control that parliament exercises over the execution laws by the executive power. This control would lose more and more of its finesse. Administrative controls, either on the occasion of the recourse of a citizen or to the opportunity for internal control through the hierarchical channel or that of the supervisory authority are limited since they cannot reach the decisions of the administrative authorities higher. Regarding respect for general principles of law, these are requirements which oblige the author of the act to take into account the defense presented by the person who risks a sanction and hear from those who risk an unfavorable decision. These principles prescribe also the impartiality of the author of the act in the assessment of the elements present during the enactment of its decision. The author of the act must carefully prepare the file that does lead to a decision. In certain cases determined by law, the requirement of careful preparation of the decision results in the conduct of a public inquiry. It can be mandatory or optional. It can be organized in its modalities and extent or not. Between other conditions, the administration must make the investigation effective, organize it in good time, make the necessary information available to the public, respect the various deadlines prescribed, organize information and consultation meetings with the public that have been planned, etc. At the end of the public inquiry, the administration must take the result into account, motivate and communicate the decision taken after the investigation, restart the investigation if the conditions of the project under investigation were modified before the adoption of the decision. As part of the obligation to inform the public, the administration has the duty to comply with the requirements relating to access to administrative documents. Those prescriptions may result from the provisions of particular laws, they may result of a generic law relating to access to administrative



documents, they can also have a constitutional basis. The control of the legal qualification of the facts is not a direct control of the power discretionary. Certainly, it seeks an assessment made by the administration. We thus observe that “to qualify the facts is already to appreciate them”. It is further observed that “the more jurisdiction assigned is discretionary, the more vague the legislative or regulatory criterion which regulates its exercise, the closer the mental operation of qualifying the facts tends to that of their appreciation”. Unlike the indirect process which has just been mentioned, the direct control of discretionary powers is more elaborate and more subtle than indirect control. Its characteristics, however, limit its scope. This control is based on two assumptions. On the one hand, the administration, enjoying a discretionary jurisdiction, is required to effectively implement it. On the other hand, it is required to use it in accordance with a procedure which guarantees the rights of individuals. The administration must make effective use of its discretion. Discretionary power is at the same time a power and a duty of appreciation. It must arise from the examination of the case that the administration has effectively exercised its power of appreciation to reach its decision. The administration must, in the exercise of this power, examine each case individually in order to adapt its assessment and decision to the specific characteristics that the case presents. To avoid the inequality likely to result from the identical treatment of situations which are nevertheless different, the case laws of “Guidelines” are developed. The use of the guidelines by the administration is to administrative regulation of the use of discretionary power. We see a shape self-limiting administrative discretion. It is, for this reason, carefully monitored.



2. GENERAL DESCRIPTION OF LEGAL AND INSTITUTIONAL FRAMEWORK OF OVERSIGHT, INSPECTIONS AND SUPERVISIONS IN NORTH MACEDONIA

Oversight covers the Oversight of the legality of general state acts, bodies, organizations and institutions and oversight over the legality of the individual acts that decide on the rights and duties of citizens, companies, institutions and other organizations as well and supervision over the legality of the work and operation of all the above. Oversight is primarily performed as preventive function, however the supervision might be broaden with inspection measures when the conformity cannot be ensured with the prevention function. These procedures are conducted exclusively in compliance with the rules of the administrative procedure proscribed with the Law on General Administrative Procedure and the Law on inspectoral supervision unless it is regulated additionally with provisions in another specific law on the matter.

Oversight and discretionary powers

The term “discretionary authority” means an authority with which the administrative authority is entrusted with certain degree of freedom in terms of making a decision, in other words to choose one of many legally admissible solutions that it considers most appropriate. In case of a discretionary decision one should choose the alternative that best suits the public interest. There is a discretionary decision when, within a legal framework, the decision-maker has a certain latitude. Discretionary power is conferred on administrative bodies for a variety of reasons. Discretionary power should not be equated with arbitrariness or illegality. Discretionary decision making is necessary since the law cannot foresee all the cases which may arise in the practice. Public authorities may be expressly authorized by law to make discretionary decisions. Discretion does not mean arbitrariness. Since the beginning of the twentieth century, there are no longer any discretionary acts which, by their nature, escape all control. In any event, the administration, even when it has a very wide discretion, remains subject in the exercise of its discretion to the control. A discretionary power can be given to a certain State authority solely on legal grounds that precisely determine the framework of this authorization. The State authorities through this kind of specific alternative behaviour have an opportunity to rule out the public authority in one way or the other. The “authorised body” has no right to create other rule or disposition, nor, according to their own will, to change the already chosen alternative of disposition – but only to use that power in terms of making a complementary decision”³. Under terms of law, a discretionary authority is a law of the administrative authority that makes a certain act of two or more opportunities, in other words its target is to choose a solution that has the best outcome. “Discretionary law exists when the administration can choose between different behaviours, if the implementation of the law meets the conditions”⁴. When using discretionary authority, civil servants and State Officials must take into account the norms, standards and principles. Moreover, their actions and decisions must not exceed the arbitrariness. Discretionary acts must be brought within the authority and in accordance with the objective to be achieved by such authorization. The norm which contains discretionary authority, it is necessary to be determined the purpose precisely and unambiguously, for which allows administrative discretion. In some cases, the

³ See Guide on Article 6 of the European Convention on Human Rights
https://www.echr.coe.int/documents/guide_art_6_eng.pdf

⁴ Maurer (H.); *Droit administrative allemande*, 8ème edition, Revue internationale de droit comparée, 1996, pp. 735-737



intention of the legislator is evident from the legislative instrument, but in other cases, the purpose for which is entrusted with certain discretionary, may not be obvious.

Discretionary administrative acts or acts adopted after free assessment are acts whose adopter is authorized by free assessment to determine whether in the particular case will adopt an act at all, and if it does, what it will be like the content of the act. Discretionary acts contain authorization for the administration to choose between two or more legally equal alternatives.

In order to frame discretionary power, restrictions on discretionary acts are as follows:

- The adopter must have the legal authority to pass such an act;
- The act has been adopted in a legally prescribed procedure;
- The form of the act must be respected
- The authorization must not be exceeded
- The authorization must not be used contrary to the purpose for which it was given
- If the act is passed contrary to the first five restrictions it will be illegal.
- If it is adopted contrary to the purpose for which the authorization was given (public interest), ie with a wrong free assessment, the act will be ineffective.

2.1. Legal framework in relation to Oversight and Inspections in North Macedonia

In the Republic of North Macedonia, the Law on the Government can be considered as the higher-level act containing provision specific to supervision as discretionary power provided to the Government by its article 30:

“(1) The Government shall supervise the work of the ministries and other bodies of the state administration and the administrative organizations.

(2) The Government has the right and duty to repeal or annul a regulation or other act of the ministries, state administration bodies and administrative organizations that is not in accordance with the Constitution, law or other regulation of the Assembly, ie regulation of the Government.”

Hence the Government may annul acts of ministers as Bylaws and Guides with general validity and other bodies of the state administration and the administrative organizations acts. Reasons for annulment might be non-compliance with the Law or other regulation or act of the Assembly and the regulations and other acts of the Government and European legislation union, as well as from the point of view of the unity of the legal system. This is further detailed with the Article 103 in the Government Rules of procedure upon a proposal for repeal, ie annulment of a regulation which is adopted by a minister, ie director, and rather generally proscribed as sub procedure in articles 111 to 114 in Rules of Procedure of the Government.

The question and main concern that arises from Article 30 of the Law on the Government is in the lack of unbiased vision and capacities how the Government Secretariat for legislation will recognize the non-accordance, since this same body is obligated to do a check of the act prior to its enactment at a first place. This specific rule and its procedures might be subject to proposal for upgrading toward overcoming the risks to rule of law imposed with annulling by in such a way positioned discretionary right. **It may be suggested that in such a situation a proper urgent Initiative for determination of conformity with constitution and legislation in the Constitutional Court is submitted, thereafter the act may be annulled or abolished with the Court Decision as appropriate.**



Authorization for performing oversight on the implementation of material legislation is proscribed in specific laws. Authorized body's perform these duties, and take appropriate actions that include practicing of proscribed discretionary rights. *It is important to stress that in accordance with the Law on General administrative procedure every administrative act may be annulled or abolished by the body that enacted the act while the legal remedy on that act is in progress.* This also means that the body whose act is appealed shall obligatory deliver a new act in the meanwhile of the remedial procedure.

The Inspections supervision system is presented in Laws indicated below:

- **The Law on the organization and work of the bodies of the State administration**

In this Law, Inspection supervisions are described in Articles 42 – 46. These articles defines Inspectoral supervision as supervision on implementation and application of legislation by state bodies, public enterprises, trade companies, institution and natural and legal persons. It is performed only by bodies of the state administration in the boundaries of their legal authorizations. For this purpose there may be constituted inspectorates as bodies in the ministries. These activities are performed by inspectors. The procedure for inspectoral oversight is commenced and performed by inspector ex-officio, in concordance with the administrative procedure. The inspector is obligated to perform in concordance with the Law and other regulation. Anyone can initiate inspectoral supervision by invoking article 3 of the Law on proceedings with complaints and proposals.

- **The Law on inspection supervision⁵**

This Law is the general Law in relation to the matter of inspections. Firstly it defines Inspection as oversight and supervision over the application of laws and other regulations and general acts in the operation of the subjects of inspection. The subject might be an entity determined by the material specific laws that provide performing inspection. Inspectors are obligated to do periodical risk assessment to select subjects to perform planed inspections within rights proscribed by their specific legislation. It is defined as process of analysis, management and reporting about the risk by non-compliance of the performance of the supervised entity, within the regulations in the appropriate field. However this Law does not apply to Ministry of Finance, the Public revenue office and Customs directorate, the Ministry of Defense and Ministry of Internal affairs.

The law regulates the basic principles of inspection, status, competencies and operation of the Inspection Council, organization and management of inspection services, monitoring, control and coordination of the work of inspection services, status and employment of inspector, license for inspector, inspector (the system of compensation of salaries of inspectors, the system for professional development and training of inspectors), the performance of the inspector, the rights and obligations of the subjects of inspection during the inspection, the procedure of performing inspection, the special actions in the inspection procedure, the relations of the inspection services and the competent bodies, as well as the implementation of the law.

This Law provides regulations for the **Inspection Council** as specific central control body consisting of seven professional members (six plus president) whose main competences are follow up and coordinate the work of the inspectoral bodies. *The Council provides Informational report for its work to the Government and to the State Assembly once a year.*

⁵ "Official Gazette of the Republic of North Macedonia" No. 102/19



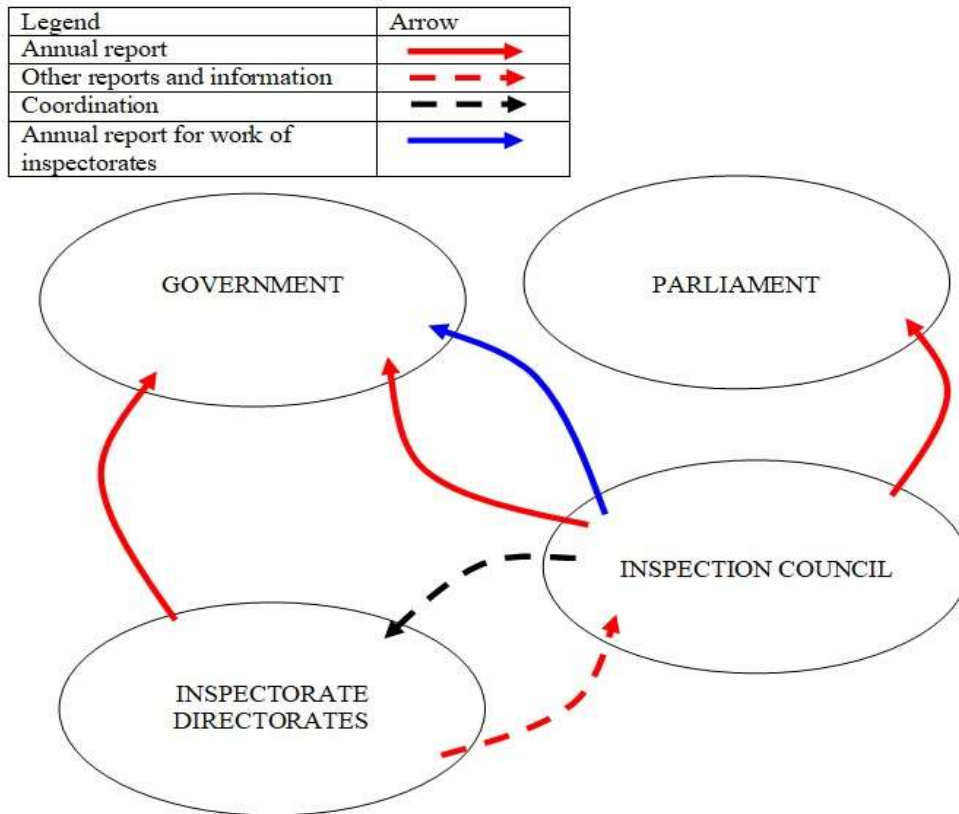
Members of the Council are selected from applicants on the basis of a public announcement in the following areas: 1) market, labor relations and safety and health at work; 2) environment and protection of human health; 3) construction, urbanism, communal works and transport; 4) agriculture, forestry, veterinary and food safety; 5) education, science and culture and 6) management. The President and the members of the Council are elected and dismissed by the Government. The mandate of the members is four years with one more mandate. (This is rather vague provision as it is not proscribed, if this two mandates are one after the other in succession or two mandates for a lifetime). There is no requirement for the applicants to have passed examination for obtaining a license for inspector in the area of hair competence.

2.2. Description of the Institutional framework: Competencies and Levels of inspections and supervisions in North Macedonia

The Table below presents the general overview of the institutional framework of inspections in North Macedonia. At the top there is the Government (the article 30 of the Law of Government defines the Government's role regarding Inspections) and the Parliament. The table presents also the **Inspection Council** and sector State Inspectorates. Inspection Council submits annual reports to the Government and Parliament of the Republic of North Macedonia for information. Inspection directorates have the obligation to deliver their annual reports to the Government directly or through their Ministries. They coordinate their work and send their semestrial reports to the Inspection council. *The Inspection council is in the obligation to prepare an annual report on the work of the inspection bodies organized as bodies within the ministries and organizational units for inspection supervision within other bodies of the state administration, which it submits to the Government.*

Table 1: General overview of the institutional framework of inspections in North Macedonia.





There are 28 inspectorates in the total. The table below presents States Inspectorates and other bodies with inspectors recognized in the Law on the organization and work of the bodies of the state administration⁶ and other laws.

Table 2 : List of inspectorates on state level.

Ministry for transport and commutation	State inspectorate for construction and urbanism
	State transport inspectorate
	State communal inspectorate
	Captain of the port of Ohrid
Ministry of Environment and Physical Planning	State environmental inspectorate
Ministry of Education and Science	State inspectorate for education
Ministry of Labor and Social Policy	State labor inspectorate
	Sector for inspection of the implementation of legal and other regulations in the field of social protection and child protection
Ministry of health	State sanitary and health inspectorate
	Chemicals sector
Ministry of information society and administration	State administrative inspectorate
Ministry of finance	State foreign exchange inspectorate
Ministry of Agriculture, Forestry and Water Economy	State inspectorate for forestry and hunting
	State inspectorate for agriculture

⁶ ("Official Gazette of the Republic of Macedonia" No. 58/00, 44/02, 82/08, 167/10, 51/11 and "Official Gazette of the Republic of North Macedonia" No. 96/19 and 110/19)



Ministry of Local Self-Government	State inspectorate for local self-government
Ministry of economy	State market inspectorate
	State inspectorate for technical inspection
Ministry of justice	Inspectorate for the use of languages ⁷

Table 3: Inspections supervisions with their inspectors

Institutions present in the Table below, within their authorizations, perform Inspection supervisions with their inspectors:

Agency for medicines and medical products	Youth and sports agency
Food and veterinary agency	Ministry of culture - department for administrative and inspection supervision
Directorate for protection and rescue	State archive of the Republic of North Macedonia
Radiation safety directorate	Center for crisis management
Cultural heritage protection directorate	Railway system safety management

The Council of Inspection Authorities

The Council of Inspection Authorities is the key institution in the inspection system. The Council is a collegial professional body consisting 7 members. It makes decisions by a majority vote of the total number of members. The leading position is held by the President of the Council.

Competencies of the Council of Inspection Authorities

Competencies of the Council of Inspection Authorities are defined in the Article 18 of the Law on Inspection Supervision ("Official Gazette of the Republic of North Macedonia" no. 102/19.

The Council performs the following activities

1) monitors and coordinates the work of the inspection services organized as bodies within the ministries and organizational units for inspection supervision within other bodies of the state administration;
2) takes care of the application of the internationally recognized standards for inspection prescribed by the international, European and regional standardization organizations, as well as for the standards and other standardization documents that constitute the national standardization, as well as the rules of good practice applied by the inspection subject. Supervision;
3) gives written consent to the annual plan for inspection supervision of the inspection services organized as bodies within the ministries and organizational units for inspection supervision within other bodies of the state administration;
4) gives an opinion on the methodologies for risk assessment adopted by the inspection services organized as bodies within the ministries and organizational units for inspection supervision within other bodies of the state administration;
5) gives an opinion on the six-month reports on inspection supervision of the inspection services organized as bodies within the ministries and organizational units for inspection

⁷ Constituted by Law for the inspectorate for the use of languages ("Official Gazette of the Republic of North Macedonia" No. 220/19 and 42/20)



supervision within other bodies of the state administration;
6) gives an opinion on the draft laws and bylaws in the field of inspection;
7) adopt guidelines for preparation of the acts for internal organization and systematization of the inspection services organized as bodies within the ministries and organizational units for inspection within other bodies of the state administration, on the basis of which the Ministry of Information Society and Administration gives consent;
8) prepares an annual report on the work of the inspection services organized as bodies within the ministries and organizational units for inspection supervision within other bodies of the state administration, which it submits to the Government;
9) issues an order for performing individual and joint inspection supervision, to the inspection services organized as bodies within the ministries and organizational units for inspection supervision within other bodies of the state administration;
10) adopts an interactive training program for obtaining an inspector license;
11) adopts a program for the exam for license for inspector – general part and organizes and conducts the general part of the exam for license for inspector;
12) issues and revokes the license for inspector;
13) develops policies for managing the performance of inspectors and monitors the success of their work;
14) create a unique framework for development and management of the inspectors in the inspection services organized as bodies within the ministries and organizational units for inspection supervision within other bodies of the state administration;
15) establishes and maintains a system for professional development and training of inspectors in the inspection services organized as bodies within the ministries and organizational units for inspection supervision within other bodies of the state administration;
16) adopts and implements an annual program for generic training of inspectors in the inspection services organized as bodies within the ministries and organizational units for inspection supervision within other bodies of the state administration;
17) adopt a strategic plan, annual work plan and annual work report of the Council;
18) establishes and maintains registers and information system for management of the inspection supervision;
19) acts upon complaints from natural and legal persons, related to the work of the inspectors, inspection services and / or the subjects of inspection supervision;
20) submits a proposal for dismissal of the director of the inspection service referred to in Article 26, paragraph (1), item 1;
21) submits an initiative for determining the disciplinary responsibility of an inspector;
22) conducts international cooperation in the field of inspection supervision and
23) other matters determined by law.

During the period from November 2019 to October 2020 a project funded by the European Bank for Reconstruction and Development (EBRD) has been implemented with the objective to improve efficiency and coordination of the Inspectorates under the Inspection Council of North Macedonia, with the final goal of reducing burden and costs to businesses through finalizing the new legal framework for inspection supervision. Within this *project a review of the regulatory framework in implementation of the new Law on Inspections has been done⁸.

⁸ In addition to this task 80 specific checklists (for selected laws) for the state inspection authorities have been developed as well as 15 specific Methodologies for risk-based planning of inspections for 14 state inspectorates and



The Law on Inspection regulates the technical (procedural) side of the inspection procedures by all inspectorates acting as bodies within the ministries, except for the special procedures for performing inspection in the field of tax, customs and financial operations which are regulated by other laws.

State Inspectorates in the context of discretionary powers

The State Inspectorate for Construction and Urban Planning

Performs supervision over the procedures for adoption and implementation of the urban plans and urban projects from this law in electronic form through the information system e-urbanism and in analog ie paper form. The Inspectorate Performs the matters of inspection over the application of the Law in construction and the regulations adopted on the basis of this law. The State Inspectorate for Construction and Urbanism has the capacity of a legal entity with its own budget account as a first line budget user, independently conducts employment procedures in accordance with law and decides on employment rights and obligations of its employees.

The State Inspectorate on Environment

The State Inspectorate on Environment performs supervision over the implementation of the Law on environment and appropriate by-laws. The State Inspectorate of Environment has the capacity of a legal entity, with its own budget account as a first line budget user, independently conducts employment procedures in accordance with law and decides on employment rights and obligations of its employees.

Environmental inspection, as part of monitoring implementation, is one of the key components used by government and other institutions to ensure that communities comply with environmental laws and regulations. It is carried out by on-site visits by a licensed inspector, by submitting a public report on the offense and by reviewing the information submitted by the industrial facility, as part of the self-monitoring and reporting program. Application monitoring generally includes self-monitoring by the entity and government inspections and investigations. Enforcement refers to actions taken by the government against perpetrators of an offense in order to oblige them to enforce the law. Those provisions generally authorize the government institution to impose sanctions, whether administrative, judicial, or criminal, and to require the perpetrator to abide by the law. Some statutes contain provisions requiring the perpetrator to repair the damage to the environment or for the government to repair the damage but then charge the perpetrator for redress.

State sanitary and health inspectorate

The main function of the Inspectorate is to inspect the implementation of regulations in the field of health in the field of health care, protection of the population from infectious diseases, health insurance, protection of patients' rights and rights in the field of mental health, records of the field of health as well as the other regulations. The competence, organizational set-up of the Inspectorate, the authorizations and responsibilities, the manner and the procedure for performing the inspection, are regulated by the Law on the Sanitary

the Food and Veterinary Agency. A Report on harmonization of administrative measures/fines if discrepancies are marked has also been prepared and trainings delivered including ToT (Training of Trainers).



and Health Inspection⁹. The State sanitary and Health Inspectorate works as a body of Ministry of Health. The Inspectorate has capacity of a Legal entity, has a separate budget account as a first line user, independently conduct employment procedures and decides on employment rights and procedures.

State administrative inspectorate

The State Administrative Inspectorate is responsible for overseeing the Law on General Administrative Procedure¹⁰, and other laws containing provisions for administrative procedure, then overseeing the application of the provisions on office work as well as the application of regulations relating to administrative officials. From here, the main mission of the inspectorate is to provide equal opportunities to the citizens of the Republic of North Macedonia in exercising and protecting their rights before the state administration bodies, respecting the principles of the rule of law and legal certainty. The State administrative Inspectorate works as a body of Ministry of Information, society and administration. The Inspectorate has capacity of a Legal entity, has a separate budget account as a first line user, independently conducts employment procedures and decides on employment rights and procedures.

State labor inspectorate

The organization and competencies of the State Labor Inspectorate are regulated by the Law on Labor Inspection¹¹, according to which this legal entity supervises the application of laws and other regulations on labor relations, employment, safety and health at work, collective agreements, employment contracts and other acts that regulate the rights, obligations and responsibilities of employers and workers in the field of labor relations, employment and safety and health at work. The State labor Inspectorate works as a body of the Ministry of Labor and social policy. The Inspectorate has capacity of a Legal entity, has a separate budget account as a first line user, independently conducts employment procedures and decides on employment rights and procedures.

Subject of inspection supervision

With the Law on Inspection Supervision, significant reforms have been made in the inspection system. Pursuant to Article 3, Item 2 of the Law on Inspection Supervision¹² "subject of inspection supervision is a legal and natural person determined by the laws which provide for conducting the inspection supervision". The main benefit is the new approach that reduces the repressive nature of inspection supervision, at the expense of strengthening the preventive role of inspectors. Rights are defined in Article 62, according to which every subject of inspection supervision has the right: 1) to propose and submit evidences that are important for determining the factual situation, during the procedure of performing the inspection supervision; 2) to refuse to sign the minutes if s/he does not agree with the facts stated in the minutes or if s/he is denied the right to comment on it; 3) to give a remark with explanation, on the minutes for performed inspection supervision, regarding: the legality of the inspection procedure, the behavior of the inspector and the accuracy of the established factual situation; 4) to a written notification on the subject and duration of the regular

⁹ "Official Gazette of the Republic of North Macedonia" No. 71/06, 139/08, 88/10, 18/11, 53/11, 164/13, 43/14, 144/14, 51/15, 150/15, 37/16 и 83/18

¹⁰ "Official Gazette of the Republic of North Macedonia" No. 124/15, 65/18

¹¹ "Official Gazette of the Republic of North Macedonia" No. 35/97, 29/02, 36/11, 164/13, 44/14, 33/15, 147/15 and 21/18 and "Official Gazette of the Republic of North Macedonia" No. 317/20

¹² "Official Gazette of the Republic of North Macedonia" no. 102/19),



inspection supervision, accompanied by a checklist; 5) to be acquainted with the rights and duties in the context of inspection supervision; 6) to be acquainted with the legal basis for performing the inspection supervision; 7) to warn the inspector of the confidentiality of the information s/he makes available to him; 8) to accompany the inspector(s) during the inspection supervision performed at the premises of the subject; 9) to obtain a copy of each checklist to be used during the inspection supervision. It is necessary to understand rights in the context of the principles of inspection supervision, including the principle of legality, the principle of material truth, and the principle of hearing the subjects of inspection supervision. Subject of Inspection are also regulated in detail in Article 63 of the Law, according to which:

- 1) The subject of inspection supervision is obliged to provide the inspector with access to the premises, products, electronic databases or any other means that are subject to inspection, as well as insight into the entire documentation and information necessary to determine the factual situation.
- 2) The subject of the inspection supervision is obliged upon the written request of the inspector, within the deadline determined by the request, to submit or prepare accurate and complete data, reports, materials or other documents that are necessary for the inspection supervision.
- 3) The subject of inspection is obliged to provide the inspector with the necessary conditions for conducting the Inspection supervision.
- 4) The subject of inspection supervision is obliged to appoint a person who will be present during the inspection supervision.
- 5) The subject of the inspection supervision is obliged, upon a reasoned written request of the inspector, to terminate the operation during the inspection, if the inspector cannot otherwise perform the inspection.
- 6) The subject of inspection supervision is obliged immediately after the expiration of the deadline determined for execution of the inspection measure, but at latest within three days, in writing and/or by e-mail, to inform the inspector whether the inspection measure has been performed.

Inspectors

Pursuant to Article 3, Item 3 of the Law on Inspection Supervision (“Official Gazette of the Republic of North Macedonia” No. 102/19), “inspector is an official with authorization, responsibilities, rights and obligations determined by law, who performs inspection supervision.” In that context, inspectors have independence and autonomy in performing the inspection supervision and in undertaking inspection measures stipulated by the law, within the authorizations and competencies determined by this or another law. The law paid great attention to inspectors and very precisely and in detail stipulated their rights, but also and obligations. They are regulated in detail in Chapters VI – IX. The new law made a major reform in the system of employment of inspectors and in this part it applies to all inspectors employed in inspection authorities at both central and local level. Article 38 of the law clearly stipulates that inspectors are, above all, administrative officers of categories B and V. They are public servants in group I.

Concerning the work of Inspectors, fundamental to performance is that inspectors abide by an organization’s published code of ethics. If they see major breaches or the code or that they are routinely ignored, especially by the management of the misdemeanor they will follow suit and the only effective way to prevent this is for managers and political leaders to set an example. The qualifications of inspectors vary widely in different inspection authorities from generalist enforcement officers through to specialists. These tend to be expert or technical roles in nature working in misdemeanor subjects. However, in a complex landscape of inspection authorities there are areas of overlap where specialists need to work together, putting aside their professional differences to be effective at working towards a common set of goals. There is therefore an argument for inspectors to acquire a common set of competencies applicable to all inspection roles. Lack of evidence for an inspection also lacks



transparency so the business is unable to understand why it is being targeted which adds to the administrative burden. Not understanding why they have been targeted causes supposition and confusion, making it more difficult for businesses to understand what successful compliance looks like. Random inspections based on risk assessment can be seen as a way of making sure that everyone should be subject to an intervention at some point, thereby ensuring that everyone is prepared and increasing compliance. Where resources of inspection authorities are also limited, rogue businesses may take the risk that a random inspection will not involve them being selected, choosing to remain non-compliant. Conversely, random inspections can be a waste of resource, especially where the businesses or individuals selected are already compliant. Concerning complaints, inspections driven by complaints or a particular event, in most cases are considered legitimate in that there is a sound reason which can be articulated for intervention. An inspection in response to a complaint (as long as it isn't vexatious or malicious) is considered to be a legitimate reason for intervention. Independence from political influence can also provide integrity and fairness to the inspection process especially where it may have significant financial and market consequences and need to be arm's length from political processes to reduce the risk of investment

The Law establishing a State Commission for decision-making in the second level in the field of inspection supervision and misdemeanor procedure indicates in its Article 1:

The State Commission for deciding in the second instance in the field of inspection and misdemeanor procedure (hereinafter: the Commission) is competent to decide on appeals against decisions made in the first instance in the inspection procedure as well as on appeals against misdemeanor decisions made by the misdemeanor authority, when it is prescribed by law to decide in a misdemeanor procedure. The State Commission for decision-making in the second level submit its annual report to the Parliament.

2.3. Control mechanisms and Misdemeanor procedure.

There are three different but connected conceptions of fairness, which are relevant here. First, there is fairness in the substantive sense, when decisions have to be made about the fairness of the distribution of the benefits or burdens of society. Secondly, there is fairness in the procedural sense. Here questions are asked about the fairness of procedures through which important decisions affecting private and public interests are made. Finally, there is the issue of formal fairness. This is expressed in statements like 'treat like issues alike'. Discretionary decisions can be unfair when officials use their powers of personal assessment to act in ways which go against any of these conceptions of fairness. Finally, there is the vital issue of guidance. It has been argued that there is virtue in a stable relationship between the state and its citizens. This can be achieved through settled rules. This allows the citizen to know what is expected of him in advance and also allows him to plan his life according to known rules. Discretion falls short of this ideal because it allows public officials personal judgement on issues of public interest. The citizen cannot know in advance what decisions officials are going to take.

Judicial control of the public administration's discretionary power

The control exercised by the courts over the administration is mostly the control of its activities in compliance with the law. A situation seems possible in which a citizen invokes the proportionality principle and submits a court complaint against the decision made against that



citizen if the agency had a different (non-authoritative) opportunity to resolve the case (attain the assumed goal). According to the Article A88 in the Law on general administrative procedure (1) The administrative act issued in writing contains: introduction, enacting clause, explanation/rationale, advice for legal remedy, signature of the authorized official and seal. This entails the need to refer to the content of legal regulations in a decision and “explain their meaning” to the addressee. The court shall verify both the selection of appropriate sources of the law and the determination of their validity and applicability as well as the correctness of the determination of the contents of the legal norms. It means that the reconstruction process and its final effect in the form of a norm to be applied will be examined. As regards the final decision formulation stage, the judicial control over the activities of the administration being a part of the administrative discretionary authority is particularly interesting. The fact that a decision is based on a norm misdemeanor the administrative discretionary authority does not rule out such control; however, it entails the limitation of its scope. If such a norm grants the possibility to choose legal consequences to the entity then each choice within the limits of its discretion is legal and cannot be undermined by the court. The court examines the decision’s compliance with the law but does not examine its fair-ness or efficacy. This control is reduced to the verification of whether the issue of a decision was preceded by a correctly executed procedure, in particular, whether all necessary steps were taken to accurately clarify the factual background and whether the legal background of the case was correctly determined. When doing that, the court cannot limit itself to the acknowledgement of the existence of the legal basis for the issue of a decision based on discretion only. The justification is a component of the decision based on administrative discretionary authority that should be analyzed in depth by the administrative court. However, its control should not be limited to checking whether the justification contains all the components specified in the regulations “surface structure”. In particular, a negative resolution should be justified persuasively and clearly when it comes to facts and the law, so that there is no doubt that all circumstances of the case were deeply considered and evaluated and that the final resolution is their logical consequence. As mentioned above, the judicial review also includes checking whether the application of the administrative discretionary authority was admissible in a specific case. The court should examine whether the decision (or, specifically, its resolution) is within the limits specified in the law.

There are dangers inherent in giving public officials discretionary powers and judicial review is one method through which administrative discretion is controlled. Yet, while the need to control administrative discretion may seem uncontroversial, the important question has always been whether judicial review is the most appropriate method for controlling such actions. The problems of the justification of the review of discretion resolve themselves into two broad questions. Perhaps the greatest problem facing judicial review and especially the review of discretion is the problem of institutional expertise. The administrative act can only be enacted for one purpose, namely the satisfaction of the general interest. Any other aim that deviates from it is considered an illegality qualified as misuse of power and which exposes the act to annulment. The conception of the misuse of power may differ according to whether it is considered to be carried out by the fact that the perpetrator of the act pursues his own interest to the detriment of the public interests or according to whether it is considered to have been carried out as soon as possible. The misuse of power poses delicate problems of proof. It is not a question, in fact, of establishing, on the basis of objective elements, the illegality committed, but rather of establishing the intention to divert the jurisdiction from its aim in the public interest. This examination assumes a subjective assessment which is far from easy. Taking these difficulties into account has given rise, in certain legal systems, to legislative measures and to specific case-law techniques.



Indirect control of discretion is limited, at the level of factual grounds, to examining their material accuracy as well as their legal qualification. The purpose of checking the material accuracy of the facts is to verify whether the facts which serve as the basis for the decision actually existed and whether they were correctly reported. Otherwise, the decision would be based on facts that never existed or were false. In these cases, it would be an arbitrary and irrational decision. The review of legal qualification aims to ensure that the facts, the existence and accuracy of which have been established, are such as to provide a legal basis for the decision. The judge checks “the relationship operated by the administrative authority between the facts it has noted and a particular legal category defined by a legal standard. The misuse of power poses delicate problems of proof. It is not a question, in fact, of establishing, on the basis of objective elements, the illegality committed, but rather of establishing the intention to divert the jurisdiction from its aim in the public interest. This examination assumes a subjective assessment which is far from easy. The taking into account of these difficulties has given rise, in certain legal systems, to legislative measures and special case-law techniques. Control of the use of discretionary power. At this level, the judge exercises control over discretionary power in two ways. On the one hand, it checks the conditions for exercising this power (A) and, on the other, the actual content of the decision (B). The control of the conditions of implementation of the discretionary power. This control is based on two assumptions. On the one hand, the administration, enjoying discretionary power, is required to effectively implement it. On the other hand, it is required to use it in accordance with a procedure which guarantees the rights of individuals. It follows from these postulates the following rules which must be observed under penalty of irregularity. The administration must make effective use of its discretion. Discretionary power is at the same time a power and a duty of appreciation. It must follow from the examination of the case that the administration effectively exercised its discretion in reaching its decision. It can neither ignore this competence nor bind itself in advance by a position of principle. The administration must, in exercising this power, examine each case individually in order to adapt its assessment and decision to the specific characteristics of the case. It cannot take refuge behind stereotypical positions, one-size-fits-all solutions.

The control of the legality of the unilateral administrative act also covers its elements linked than on its discretionary elements. As a result, the control of discretionary powers is therefore as much a control of legality of the related elements as of the elements unrelated to the unilateral administrative act. These two modalities all contribute to the achievement of the same objective, namely the limitation of the discretionary power of administration. Of course, the effect of the control varies depending on the element of the act concerned. The effect is indirect when the related elements are targeted insofar as these elements indirectly condition the legality of the exercise of discretion. The power discretion can only be exercised on a regular basis if the requirements relating to these related elements have been respected. The effect is, on the other hand, direct when the elements of the act that are not linked to the extent that the control directly affects either the extent of the discretionary powers or the use that has been made of them. These two modalities control of discretion have a close relationship. Elements targeted by the indirect control of discretionary power. It is generally considered that operations on jurisdiction, procedure of elaboration, the form, the materiality of the facts and the purpose of the act are objective. They consist, in fact, of legal operations which ensure the conformity of the facts with the legal condition. This reading is generally true provided that the author of the act can make a subjective assessment of the fact that fulfills the condition of which its competence is affected or the terms of the drafting procedure. The control of these legal operations is thus situated on the so-called external legality aspects and on those so-called internal legality. This distinction is, however, not absolute. The control of compliance with the rules of jurisdiction aims to verify whether the author of the act has

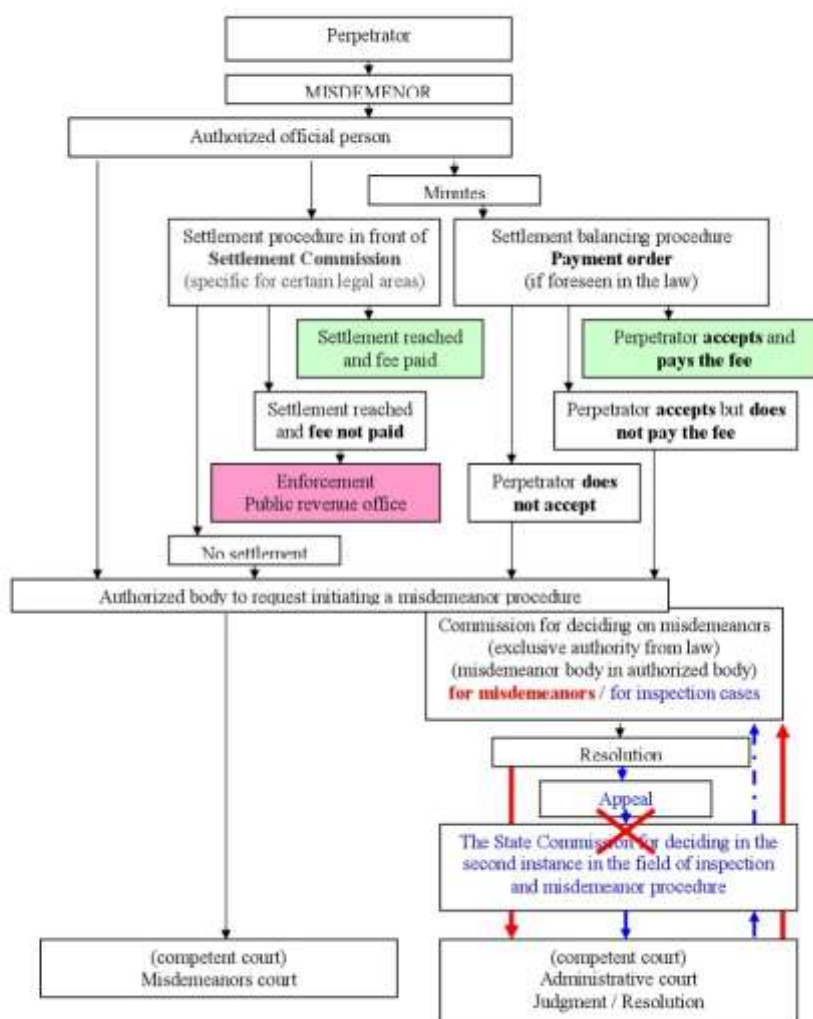


respected the attributions conferred on it from a material, spatial and temporal point of view. But first, we must verify whether the author of the act was really invested in the functions for which he took the act or if he was still in at that time.

Control of the content of the decision. The expression “control of the content of the decision” must be taken here in its broadest sense, that is to say encompassing both control of the choice of the advisability of the action and control of the choice of content of the decision. As has been said before, there is a difference between two modalities of discretionary power. The choice of the advisability of action consists, for the administration, in assessing whether, in the light of the facts, it is opportune to act. This is the case when the disciplinary authority, seized of the facts constituting a fault committed. The characteristics of direct control of discretionary power. It follows from the preceding analyzes that the real control of discretionary power, that which touches the very heart of discretionary power, is that which bears directly on the judgments of the administration’s expediency. It should be noted however that it is a very delicate control, very demanding in terms of intellectual operation to be carried out, in terms of audacity for the judge to take the risk of a confrontation with the administration, which is more likely. Criticism and therefore only applies in very limited cases. Direct control of discretionary power thus requires a favorable context for its exercise, failing which it is difficult for it to emerge and flourish. It should be made clear that the two aspects of the control of discretionary power are not mutually exclusive and are not mutually exclusive. They are rather complementary. Indirect control is constant control. In most cases, the judicial control is limited to the control of the related elements of external legality and internal legality. Indirect control can also be exercised cumulatively with direct control. In fact, whenever the judge controls the extent or use of the discretionary power, he will first have checked the competence of the author of the act, the procedure for drawing up the act, the form of the act, the object and reasons of the latter. On the other hand, direct control is never exercised alone. There is no case where the judge only verifies the appraisal on an expedient basis without verifying compliance with the requirements relating to the related elements of the act. Direct control comes, in principle, after indirect control. “Assuming that an act withstands all the checks involved in examining its grounds, that it turns out to have established, admissible, relevant grounds. On analysis, it appears that the control of discretionary power is control that does not allow itself to be confined in fixed categories. When asked how far the judge’s control over discretionary power can go, it appears difficult to determine precise limits. The least that can be said is that its intensity varies depending on the cases brought to the attention of the judge. We observe, moreover, that there are no constant criteria making it possible to systematize the exercise of control in terms of its scope. It is essentially pragmatic control. Despite the importance of his control, the judge must avoid taking the place of the administration.

Table 4 : Procedures for processing misdemeanors and inspection oversight cases in various fields of practice as proscribed in the Law on misdemeanors





X : The red cross X on the picture indicates that the Commission no longer receives misdemeanor cases from inspection and the cases are handled by the Administrative Court

The graphic above presents the proscribed unified procedures for processing misdemeanors in various fields of practice proscribed in the Law on misdemeanors¹³. Although the Law on the inspectorial supervision does not apply to some of the authorized official persons, as are from the Ministry of interior, the Law is relevant for both types of misdemeanors in North Macedonia, criminal and administrative: The first one are the Misdemeanors related to low impact criminal behavior and the second are the Administrative misdemeanors related to administrative activities. The provisions of the general part of the Criminal Code shall be appropriately applied for the misdemeanor and the misdemeanor liability. Generally, unless otherwise determined by the provisions of this Law, the courts in

¹³ "Official Gazette of the Republic of North Macedonia" No 96/2019



the misdemeanor procedure shall apply the provisions of the Law on Criminal Procedure which refer to the basic principles: language, local jurisdiction, consequences of incompetence, conflict of competencies, exemption, accused, defense counsel, submissions, minutes, deadlines, property claim, making and announcing decisions, delivery of written and regular and extraordinary legal remedies. Regarding the misdemeanor body, when conducting the misdemeanor procedure, it shall appropriately apply the provisions of the Law on General Administrative Procedure, unless otherwise determined by this Law. This is also relevant for the authorized official person in a public body who is authorized to conduct a misdemeanor procedure and impose misdemeanor sanctions in the misdemeanor procedures determined by the material law and to issue a misdemeanor payment order.

The goal with constituting the State commission for decision-making in the second level in the field of inspection supervision and misdemeanor procedure was to acquit the courts of many misdemeanor proceedings. However, the huge backlog of over 2000 cases transferred from 2019 to 2020, with only about 12% inspectorial cases and lack of capacity leads to uncertainty in the foreseeable future of the Commission.

The Law on misdemeanors proscribes that second instance protection for misdemeanors is further provided in front of the administrative court upon lawsuit.

2.4. General Problem analysis

The State Commission for decision-making in the field of inspection supervision is responsible solely to the Assembly / Parliament, to which the Annual Report for works of the Commission is submitted. The Commission has President and six members. They perform their function professionally. They may be reelected without restrictions on mandate lasting 5 years. The Commission work on sessions and make decisions with majority of total members. The necessary quorum is 5 members.

The Table below shows the Problem Analysis in relation to the Law establishing a State commission for decision-making in the second level in the field of inspection supervision and misdemeanor procedure and its implementation.

Table 5: Problem Analysis in relation to the Law establishing a State Commission for decision-making in the second level in the field of inspection supervision and misdemeanor procedure and its implementation

PROBLEM ANALYSIS					
Article	Text of the article in the law	PROBLEM	CAUSES	CONSEQUENCE	COMMENTS
A1(2)	In the procedure for resolving appeals, the State Commission shall apply the provisions of the Law on General Administrative Procedure, the Law on Inspection Supervision and the <u>Law on Misdemeanors</u> , unless otherwise regulated by this or another law.	Huge backlog of unprosecuted or unsolved second instance cases.	Commission competences is/was to process appeals by two internal sectors: 1. Inspection supervision department 2. Misdemeanors department	S By order in the Law on misdemeanors (A131) the Commission is not entitled to receive the misdemeanor appeals after 31.12.2020.	Commission competences after 31.12.2020 is to process appeals decisions of the inspectors adopted in an administrative procedure



A9(7)	When the State Commission acts upon a declared appeal against a decision that was once annulled and returned for reconsideration, acting upon the appeal, the State Commission shall resolve the case itself.	Capacity to resolve the case regarding the misdemeanors	Lack of specific knowledge within the commission		Demands to the Commission to have in depth knowledge and experience in various fields not only to inspection procedures itself but in specific material laws.
A(9-a)1	The State Commission shall be obliged to authorize a member-member or administrative officer to conduct the appeal procedure.				The procedure is held by member of the Misdemeanor or administrative officer.
A(9-a)2	When the second instance body acts upon a declared appeal against an administrative act that was once annulled and returned for reconsideration, the authorized official referred to in paragraph (1) of this Article is obliged within 10 days from the day of receiving the appeal to ask the first instance body to establish all the facts and obtain all the evidence related to the case, necessary for resolving it.				The authorized official has 10 days to ask the first instance body to establish all the facts and obtain all the evidence. Note: The paragraph 3 in the article requests the authorized official to provide requested facts and obtain all the evidence and refer to the State Commission in 15 days
A(9-a)4	If the authorized official referred to in paragraph (1) of this Article does not have expert knowledge of a fact that is important for resolving the case, it may within 10 days from the day of receiving the appeal appoint an expert or other expert after official duty or request of the party .	The procedure to ask for all the facts and evidence lasts in total 25 days. In 10 days the authorized official may appoint external expert. The expert has 30 days too deliver the opinion.	1) Discretionary right of the authorized official if and how to appoint expert 1. appointment ex officio 2. appointment on request of a party 2) The question is how the party does now that the appointed official does not have expert Knowledge	However this may impose additional burden to the interested party if expert is not appointed ex officio	The lack of knowledge may be compensated with outsource expert with specific expertise.
A(11)	(1) An administrative dispute may be initiated against the decision of the State Commission before a competent court. (2) The lawsuit against the decision of the State Commission shall not postpone the execution of the decision.	The Law provides that the appeal or the lawsuit shall not postpone the execution of the Decision . Contrary the Law on misdemeanors provides that appeal or lawsuit postpone the execution of the Decision	The Decisions of the inspector sometimes demand urgent actions, that if not timely taken may cause serious public consequences, depending the specific law.	The inspector deliver one Decision for the inspectoral supervision requesting actions from the specific material law, and Another Decision if there is legal basis for misdemeanor fee. This way the requested action shall not be postponed.	



A(12)1	The procedures on appeals against decisions of the inspectors adopted in administrative procedure under inspection before the State Commission for deciding in administrative procedure and employment procedure in second instance started until the beginning of the application of this Law shall be completed by the State Commission in accordance with the regulations. After which they were started.	This provision refers to the time and prior to constitution of this Commission
A(12)2	The resolution of the cases started until the day of starting the application of this Law, after which an administrative dispute has been initiated, shall continue in accordance with the provisions of this Law.	This provision refers to the time and prior to constitution of this Commission, and operationalization of this Law
A(12)3	The existing laws which determine the right to appeal against decisions of the inspectors before the State Commission for deciding in administrative procedure and employment procedure in the second instance shall be harmonized with the provisions of this Law until the day of starting the application of this Law.	This provision declares that all of the provisions in relevant legislation dated prior to enactment of this law, shall be harmonized in that the State Commission for deciding in administrative procedure and employment procedure in the second instance is not appeal body for decisions of the inspectors.
A(12)4	The existing laws which regulate the competence of the misdemeanor bodies to decide in misdemeanor procedure shall be harmonized with the provisions of this Law until the day of commencement of the application of this Law.	This provision declares that all of the provisions in relevant legislation dated prior to enactment of this law, shall be harmonized in that the regulations of the competences for deciding in Misdemeanor procedure (including the inspectors) shall be harmonized with this Law.

Legislative solution in article 132 of the Law on misdemeanors for abolishing the right of the Commission to accept and decide misdemeanor appeals, also means that the right to appeal in misdemeanor cases proscribed in various laws is also abolished. After the date 01.01.2021 the only legal remedy available for the concerned party is the right to initiate an administrative dispute procedure with a lawsuit in front of the Administrative court. This also makes the inspector decision on a misdemeanor a final administrative act. In accordance with paragraph 2 in article 15 of the Law on general administrative procedure such act may be annulled, abolished or modified in situations determined by law, and in accordance with article 124 it may in any time be declared as null and void. With the lawsuit the plaintiff may require: annulment of an individual administrative act or its declaration as null and void or modification



of the individual act.

In accordance with article 70 paragraph 5 of the Law on misdemeanors, the lawsuit postpones the execution of the decision. This is in conflict with provisions in various specific laws where the appeal does not postpone the execution of the decision. Another fact to be considered also is the list of reasons in article 24 in the Law on administrative dispute that might be stipulated when filing administrative lawsuit. The Law on misdemeanors recognizes appeal due to improperly measured and imposed misdemeanor sanction that is not recognized as a reason for filing the administrative lawsuit. The other authorization of the Commission still in power is regarding the appeal on a decision in inspectoral supervision. It is in line with article 84 in the Law for inspectoral supervision.



3. OVERVIEW OF THE LEGAL FRAMEWORK: OVERSIGHT AND CONTROL MECHANISMS

3.1. OVERSIGHT IN THE LEGAL FRAMEWORK ON ENVIRONMENT PROTECTION

3.1.1. Overview and Analysis

In accordance with the EC Progress report 2021, North Macedonia is encouraged to considerably step up ambitions regarding the green transition, notably in the context of the Green Agenda for the Western Balkans. The EC Progress reports indicates that most of last year's recommendations were not implemented. In the coming year, the country should in particular: improve inter-sectoral coordination and increase financial resources for the reduction of air pollution at the local and national level; make significant steps to establish a regional waste management system; implement the Paris Agreement, including by adopting a comprehensive climate Strategy and a Law, consistent with the EU 2030 framework. On horizontal issues, administrative capacity at all levels remains weak, with insufficient financial resources to implement and enforce existing legislation. Implementation of Environmental Impact Assessments and Strategic Environmental Assessments Directives needs to be improved, notably the public consultation processes and on the quality of the reports. Dialogue with civil society and public consultation processes in this sector needs to be significantly improved. Lack of transparency and access to information is a recurring issue. The Law on environmental inspection and the amendments on the Law on environmental impact assessment are yet to be adopted. Limited progress was made on the INSPIRE Directive and in the area of environmental liability. On industrial pollution and risk management, the Law on industrial emissions is still not adopted. Insufficient enforcement of polluter accountability prevents the setting up of a system to prevent industrial and chemical accidents. Efforts are needed to align with the Seveso III Directive, EU Ecolabel regulations and environmental management audit system. The alignment of the legal framework with the EU acquis remains low and the human and financial resources are very limited. While the law on Climate Action has yet to be adopted, a long-term strategy on Climate Action, with a dedicated action plan, was adopted. More efforts are needed to implement the Paris Agreement. The enhanced Nationally Determined Contribution was submitted and is in line with the long term climate change strategy and energy strategy. A platform for monitoring, reporting and verification is being prepared.

The Third Environmental Performance Review (EPR) of North Macedonia, launched in Skopje on 4 November 2019, looks at progress made in 2011–2018 and makes 72 recommendations for future action to improve the country's environmental performance. By carrying out an EPR for the third time, the country demonstrates its sustained commitment to improving its environmental performance. In North Macedonia, the formal institutional framework for coordination of the implementation and monitoring of the Sustainable Development Goals of the 2030 Agenda for Sustainable Development is established; however, it is not active. The national institutional framework includes the Cabinet of the Deputy Prime Minister responsible for Economic Affairs and Coordination with the Economic Sectors, and the National Council on Sustainable Development. The Cabinet of the Deputy Prime Minister oversees sustainable development policies and coordinates the



implementation and monitoring of the Sustainable Development Goals. The National Council, established in 2010, has the role of the political body mandated to guide implementation of the Sustainable Development Goals

The Third Environmental Performance Review (EPR) indicates that the implementation of existing legislation remains a challenge, especially in the areas of issuing permits, EPR and waste management, protected areas and noise. However, the speed of the approximation process in the environmental area has been commensurate with the national capacities for implementation. Municipalities face significant difficulties with the implementation of their environment-related competences. The provision of guidance and assistance by the Ministry of Environment and Physical Planning is at an insufficient level. Regular consultations and meetings with the local self-government units (LSGUs) on environmental policy issues, as well as specialized training, are not organized by the Ministry.

The legislation for and implementation of single-medium environmental permitting are generally well in place. Since 2011, the Ministry of Environment and Physical Planning has put significant efforts into the issuance of the A- and B-type permits in the country. No public register of the permits issued was established. The current integrated environmental permitting (IEP) process is not implemented according to the relevant EU directives.

The existing procedure, by which the Ministry has both policy development functions and those of policy implementation, including environmental permitting, environmental impact assessment (EIA) and environmental elaborates proceedings, monitoring, assessment and reporting, is in contradiction with good practice in environmental governance and limits access to justice in environmental decision-making. The legislation on EIA does not provide for a clear EIA screening process and does not set out clearly the decision-making process. The list of activities does not follow the annexes of the relevant EU EIA directives and, at the same time, the listed activities do not refer to national classification of activities. The state environmental inspectors have put in a lot of effort to discipline operators and to change their behavior towards the implementation of environmental legislation, as proven by the amount of written decisions and minutes. In 2014–2017, 100 per cent of the inspections carried out by SEI produced minutes with conclusions and the total number of written decisions directed to the operators to undertake certain actions was 1,530.

Oversight over the implementation of the Law on Environment protection and its appropriate by-laws is performed by Ministry of Environment. The Inspection oversight over the implementation of this law and appropriate by-laws is performed by the State Inspectorate of Environment, through the state inspectors of environment and state inspectors for nature protection.

The municipality, the city of Skopje and the municipalities in the city of Skopje perform inspection supervision over the application of this law and the appropriate by-laws in the scope of their authorizations provide by this law. These duties are performed by authorized environmental inspectors of the municipality, authorized environmental inspectors of the city Skopje and authorized environmental inspectors of the municipalities in the city of Skopje.

Inspection over the application of this Law in the part of the trade with products, semi-finished products, raw materials, chemical substances, waste materials intended for processing and recycling and packaging and marking of products and packaging with information on environmental impact is performed by the State Market Inspectorate, through



the state market inspectors, the State Sanitary and Health Inspectorate, through the state sanitary and health inspectors, the Phytosanitary Administration through the phytosanitary inspectors and the State Inspectorate for Agriculture through the state inspectors for agriculture.

The Article 194 (5) of the Law on environment protection is dedicated to Inspection supervision over the application of this Law in the part of the trade with products, semi-finished products and raw materials intended for human use for food and drink and their packaging and marking with information on the impact on the environment shall be performed by the Food Directorate through the food inspectors.

Table 6 : Relevant inspectorate and inspectors for performing supervision in environment protection.

Place of employment of Inspectors	Inspectors
State Inspectorate for environment Responsible to the Government	through the state inspectors of environment and state inspectors for nature protection
Municipality	authorized environmental inspectors
City Skopje	authorized environmental inspectors
Municipalities in the city of Skopje	authorized environmental inspectors
State Market Inspectorate	state market inspectors
State Sanitary and Health Inspectorate	state sanitary and health inspectors
Phytosanitary Administration	phytosanitary inspectors
State Inspectorate for Agriculture	state inspectors for agriculture
Food Directorate	food inspectors

The State Inspectorate of Environment supervises the work of the authorized environmental inspectors in the application of the environmental regulations during the performance of the inspection supervision. The State Inspectorate of Environment has the capacity of a legal entity, with its own budget account as a first line budget user, independently conducts employment procedures in accordance with law and decides on employment rights and obligations. The director of the State Inspectorate of Environment is appointed by the Government by means of a public vacancy call in at least three daily papers, with mandate of four years. There is no limit for consecutive mandates proscribed in the law. The requirements are the same for the administrative employee of B1 category. There is no requirement for the appointed person to have inspectors license of any level. The inspectors on the other side are required to have necessary knowledge to obtain inspectors licenses and to have one, in accordance with the Law for inspectoral supervision. The inspector should meet other conditions set out in the act for job systematization. This may present subtitle discretionary power of the director, in electing candidates for employment, by specification in positions within job systematization. The State Inspectorate of Environment for its work is responsible to the Government. The Government of the Republic of Macedonia, on the proposal of the Minister managing the body of the state administration responsible for the affairs of the environment, determines the activities for which a report is obligatorily prepared, and for the approval of which the body responsible for performing professional work in the field of environment is entitled.

Procedure for performing inspection supervision

In accordance with the Article 208 of the Law on environment, in performing the



inspection supervision, the State and the authorized inspector within its competence, determined by this and other laws, is independent and solely performing the inspection supervision and in undertaking administrative and other measures determined by law. The State Inspector is authorized to inspect legal and natural persons, at any time and on the spot, without prior notice in the business premises, installations, facilities, as well as the means and equipment to perform the activity for which an A-integrated environmental permit is required and for which a B-integrated environmental permit is required (Article 95 of this Law), as well as for legal and natural persons performing activities and activities in accordance with the regulation referred to in (Article 24 paragraph (4)) of this law. The authorized inspector for environment of the municipality and the authorized inspector for environment of the municipalities in the city of Skopje is authorized to perform inspection supervision over legal and natural persons, at any time and on the spot, without prior notice in the business premises, installations, facilities, as well as the means and equipment for performing the activity and activity for which a B-integrated environmental permit is required and also when integrated environmental permit is not required.

If there is larger scale irregularity, in the installations with A-integrated environmental permit or with another legal and natural person, the authorized inspector is obliged to inform the State Inspectorate for Environment without delay. The appeal against the decisions of the State inspector or the authorized inspector is admitted to the State Commission for decision-making in the second instance in the field of inspection supervision and the misdemeanor procedure. The appeal shall not postpone the execution of the decision, if the postponement would create a danger for endangering the environment and the life and health of the people.

Even there is clear division of authorizations for State and authorized inspectors the state inspector may perform inspection supervision as authorized inspector if there is an information that the authorized environmental inspector has not acted on the basis of a received report and / or information from other State bodies, organizations, institutions, legal and natural persons as well as from the media.

The Law contains clear provision for obligations of State and authorized inspectors upon activities to be performed by an initiative or application for initiating an inspection procedure from natural persons or legal entities. By default this is done via means available for the public in the Law on proceedings with complaints and proposals (Article 4). The appropriate inspector is obligated to initiate the inspection within 7 days, and to inform the submitter of the initiative or the application seven days from the day of conducting the inspection.

If the state inspectorate received the initiative that is out of their ex officio competences they will submit it to the competent mayor of the appropriate municipality for further action in the next seven days. For this the state inspector is obligated to inform the submitter, as well. If there is additional information from the submitter to the state inspectorate that there was no activity upon the initiative than the State inspectorate shall submit an indication to the mayor of the municipality with a time frame not longer than 30 days to take appropriate measures or to perform the supervision, as well to inform the State inspectorate for the actions done. In case of further omission the State inspectorate shall solely perform the activities and charge the municipality for expenses.

The regular obligation of the State and authorized inspectors includes making evidence of supervisions done, making quarterly report and publishing it on the web page of the ministry or municipality or the other organ that performed the inspectoral supervision. At



the end of January the State inspectorate for environment and the authorized inspector is obligated to prepare a yearly report with statistics on performed supervisions, taken administrative measures, applications and their outcomes. This report in the proscribed format by the minister is to be submitted to the ministry of environment for adoption. Apron those reports the ministry creates yearly report for inspectoral measures taken for protection of the environment and submits it for information to the Government. For transparency on their work the Inspectorate and the authorized environmental inspectors publish the inspection acts on their website within three days from the day of their adoption, in accordance with the regulations for personal data protection.

The scope of supervision of State environment inspectors

In accordance with the Article 198 of the Law on Environment, the scope of supervision of the State inspector is proscribed by 48 points in paragraph 1 of article 198 in the Law on Environment. The regular supervision over the installation determined in the integrated environmental permit is be carried out by a state inspector, and if necessary, with the presence of an official from the body competent for performing professional activities in the environment. The state inspector may request the presence of a person from the body competent for performing professional activities in the environment. Furthermore, at the request of the state inspector, an authorized official of the body of the state administration responsible for internal affairs is obliged to participate in the execution of the activities proscribed in this Article. Supervision over the calculated and paid compensation which is paid for domestic legal entities and individuals that pollute the environment by using motor vehicles, excluding ones powered by electricity, is performed by the State Inspectorate of Environment through the state inspectors of environment. Appeal against the decision of the inspectors may be filed to the Commission for deciding in the second instance on appeals. Articles from 198 to 200 are relevant. The adoption of decisions by the State inspector is defined in the Article 200 as follow:

(1) When performing the inspection, the state inspector with a decision:

Decision
1) determine measures in order to eliminate the causes of the occurrence of environmental pollution;
2) order the removal of the harmful consequences caused by the pollution or the degradation of the environment and nature and bringing the environment to a previous state;
3) determine measures for prevention and removal of pollution and return of the environment to a satisfactory condition;
4) prohibit the construction or reconstruction of an installation if the established norms and standards for environmental protection are not respected, for a period of 90 days within which the causes of the situation should be eliminated;
5) restrict the operation of facilities, plants and installations, due to harmful actions that cause pollution or degradation of the environment and human life and health, regardless of whether conditions are provided for their operation and whether permits are provided , approvals and consents, prescribed by law, for a maximum of 90 days, within which the reasons for the situation should be eliminated;
6) prohibit the operation of facilities, plants and installations, due to harmful actions that cause pollution or degradation of the environment and human life and health, regardless of whether conditions are provided for their operation and whether permits are provided , approvals and consents, prescribed by law, for a maximum of 90 days, within which the reasons for the situation should be eliminated;
7) restrict and / or prohibit the operation and / or use of technology, technological product line, semi-finished products, raw materials, equipment, appliances and devices that have a harmful effect and do not meet the prescribed conditions, ie until a final decision is made on the competent court or misdemeanor authority;
7-a) shall prohibit the work of legal and natural persons handling refrigerants and / or products containing refrigerants without an appropriate license in accordance with Article 22-b of this Law;
7-b) determine whether the natural and legal person that handles refrigerants and / or products containing refrigerants to the body of the state administration responsible for performing the activities in the field of environment, has submitted a report for the previous year on the species and the quantities of collected, renewed and recycled refrigerants which he acted in accordance with Article 22-b of this Law;



8) temporarily confiscate equipment, products, devices and appliances that are sources of pollution or degradation of the environment, or do not meet the prescribed conditions, until the elimination of the deficiencies, ie until a final decision is made by the competent court or misdemeanor body;
9) will oblige the legal and natural persons to prepare a report on the impacts of the project on the environment and to submit it for approval to the competent body within a maximum of 90 days from the day when it is concluded that they have not prepared a report, ie from the day when they received the decision.
9-a) will prohibit the work of legal and natural persons that perform activities or activities prescribed in Article 24 paragraph (4) and (6) without a decision for approval of the elaboration for environmental protection issued by the competent body until a decision is obtained for approval of the report in accordance with Article 24 of this Law;
9-b) to order the implementation of a measure determined in the elaboration and to determine the time limit for implementation of the measure (Article 24);
10) oblige the legal or natural person that has not submitted an application for obtaining an integrated environmental permit to do so within a maximum of 90 days;
11) restrict or prohibit the work of a legal or natural person who has not submitted a request for obtaining an integrated environmental permit, and up to a maximum of 90 days within which the reasons for the situation should be removed, ie until a final decision is made by the competent court or the misdemeanor authority;
12) oblige the legal or natural person that has not submitted a notification on the presence of dangerous substances, to do so within a maximum of 90 days;
13) oblige the legal entity and the natural person to prepare an emergency plan to do so within a maximum of 90 days;
14) oblige the legal or natural person to take measures for fulfilling the conditions stipulated in the integrated environmental permits, the permits for compliance with the operational plans, the elaborations for the project impacts on the environment, the studies for environmental impact assessment and the protection plans from accidents;
15) restrict or prohibit the work of a legal or natural person that does not meet the requirements provided in the integrated environmental permits, permits for compliance with operational plans, elaborations on the project impacts on the environment, environmental impact assessment studies, plans for the protections from accidents, until the fulfillment of the conditions, and up to 90 days at the most, within which period the causes for the occurred condition should be removed;
16) temporarily seize products, semi-finished products, raw materials and chemicals that are not marked for the possibility of pollution or possible harmful impact on the environment, as well as do not provide data on their properties and effects;
17) oblige the legal or natural person to submit and / or submit the monitoring information and other environmental information within a maximum of 30 days;
18) shall oblige the legal and natural persons to monitor the pollution in the environment in a period of maximum 90 days, in case of occurrence of pollution in the vicinity of the building of the legal and natural person in which the activity is presumed to be carried out. Causes pollution;
19) restrict or prohibit the work of a legal and natural person that does not conduct the monitoring in a manner prescribed by law, for a maximum period of 30 days, within which the reasons for the situation should be eliminated;
20) oblige the legal entities and natural persons to submit the necessary data from the monitoring for the Registry and the Cadaster within a maximum of 30 days from the day of ascertaining the deficiency;
21) restrict or prohibit the implementation of a project for which no decision has been received for assessment of the study on the impacts of the project on the environment, which gives consent for the implementation of the project, regardless of whether the competent authority has issued a permit for project implementation, duration of 90 days within which the causes of the situation should be eliminated;
22) oblige the legal or natural person that has not submitted a request for obtaining a permit for compliance with the operational plan to do so within a maximum of 90 days;
23) restrict or prohibit the work of a legal and natural person that does not have an integrated environmental permit and a permit for compliance with the operational plan for a period of 90 days within which the reasons for the situation should be eliminated;
24) restrict or prohibit the work of a legal or natural person that releases emissions into the environment higher than those prescribed by law or a regulation adopted on the basis of law and / or emissions determined by the integrated environmental permits, up to a maximum of 90 days within which the causes of the situation should be removed and
25) for the protection of human health, restrict or prohibit the work of a legal or natural person that emits emissions into the environment, or restrict their emissions, in case when in the vicinity of the legal or natural person, the quality standards are violated of the environment, in a period of time until the quality of the environment is brought within the established quality standards.

Review on B-integrated permits

The State Audit Office has conducted an audit on “Performance review of success effectiveness of measures and activities for issue of B-integrated permits” published in June 2021. In accordance In most of the entities, accounting records of receivables from the installation operators are not established, which does not enable their



monitoring and regular collection. The absence of proper records does not allow in case of uncollected claims timely warning or revocation of the license. The audited entities did not submit evidence of the intended spending of the collected invoice payments (fee). The State Audit Office recommended to initiate a change in the legislation in order to determine the deadlines for calculating the invoice payments (fee) and making decisions for its payment. It recommended also to amend the Decrees that regulate the amount of invoice payments (fee) that pay the operators of the installations with provisions that regulate it.

The Internal monitoring of the installations is largely established by the operators, but the information from it is not submitted to the Ministry. A monitoring network has not been established at national and local level, due to which it is not possible to fully monitor the situation regarding industrial installations, as well as their impact on the quality and changes in the media and environmental areas. The supervisory activities of the competent institutions are insufficiently represented, which affects the untimely detection, prevention and control of environmental pollution caused by industrial installations.

The State Audit Office (SAO) recommended also to carry out a detailed check of the parameters listed in the "Rulebook on hazardous substances, limit value (thresholds) for the presence of hazardous substances and the criteria or properties according to which the substance is classified as dangerous" and supplement it with missing parameters, and in the industrial activity of installations are discharged into the environmental media at the same time to determine their limit values. Another recommendation is related to the continuation of the activities for adoption and adoption of strategic and program documents for establishing environmental monitoring.

Concerning supervision, the State Audit Office recommended:

- The Ministry, through the Sector for Cooperation with Local Self-Government and Supervisory Affairs to take measures to perform supervisory activities in a number of municipalities and the City of Skopje in terms of implementation of laws and bylaws related to integrated pollution prevention and control. In addition to the regular activities and questions, their scope should be focused on inspection and verification of the documentation available to the installation operators.
- In addition, the State and authorized inspectors should increase their inspection activities in the installations that still have old approvals to see the reasons why the operational plans have not been realized and to give concrete directions for action. In case of conditions where there is continuous pollution, the integrated environmental permit should be revoked and the operation should be banned until the full implementation of the operational plan and creation of conditions for issuance of B-Integrated Permit.
- The State Environment Inspection (SEI), City of Skopje and the municipalities in cooperation with the competent institutions take measures for staffing with state inspectors / authorized environmental inspectors and increase the number of surveillance activities and the scope of the installations where the inspection is performed. Competent employees in the Ministry, state and authorized inspectors through the undertaken supervisory activities to ensure that it is carried out continuous internal monitoring, by installation operators and the results of the monitoring and the measured are submitted regularly and on time emissions to the Ministry. In case of reprimand and further absence of monitoring, the Misdemeanor Commission to impose a fine for inappropriate action.

With the exception of the Ministry and the municipality of Veles, in other municipalities that submitted bills and decisions for calculated fees, the State Audit Office determined that no accounting records of receivables from installation operators have been established, which is their



legal obligation. The records established in this way are not orderly and clear and do not allow regular monitoring of receivables and their collection. The city of Skopje and the municipalities of Kumanovo and Veles have not taken measures and activities to collect fees, although several years have passed and they have not been collected yet. In accordance with the provisions of the Rulebook on the procedure for obtaining a B-IEP, if the licensee does not pay the fee, and is duly notified and warned, the competent authority has the right to revoke the license. In the period 2017-2019, no procedure for revoking the license was conducted. The conducted analyzes concluded that the way of using the collected funds from B-IEP fees is not clear. Namely, the legal provisions do not specify exactly for which types of costs the obtained funds can be spent during obtaining, transferring or changing and controlling environmental permits. The entities covered by the audit did not provide evidence of the use of the collected funds on legal grounds. In the Ministry, these funds are included in the financing of activities envisaged by the Annual Environmental Investment Program. The established conditions indicate inaccuracy, untimely, incomplete and untidy established accounting records, as well as failure to undertake activities on timely collection of receivables, which affects the objectivity and completeness of receivables stated in the business books, the continuity of monitoring receivables. income. Also, the funds from the paid fees are not used for the purposes provided by law.

The Commission for best available techniques

The situation with collection of fees from holders of integrated permits is notified before and in this Analysis as well. Referencing the Law on environment articles 104 and 121 (4) the minister is authorized to form a Scientific - technical commission for best available techniques (A104 (1)) and to ad hoc consult it when necessary (A104 (3)). The A121 (4) states:

“(4) The funds received from the fee referred to in paragraph (1) of this Article shall be paid to a special account of the body of the state administration responsible for the affairs of the environment, and shall be used to cover the costs for obtaining, transfer or change, as well as control of the A-integrated environmental permit, to cover the costs for the remediation measures referred to in Article 120 of this Law, as well as for the work of the Commission for best available techniques.”, Hence allowing remuneration for the members of the commission.

There are no clear profusions on the number of members, their mandate and remunerations for done work. (6) The Minister managing the body of the state administration responsible for the affairs of the environment shall prescribe the detailed conditions that should be fulfilled by the members of the Commission referred to in paragraph (1) of this Article. (7) The Minister managing the body of the state administration responsible for the affairs of the environment shall prescribe the works and the criteria that should be taken into account when determining the best available techniques, taking into account the general and individual conditions for each industrial sector. The term “best available techniques” is defined in the article 5 (1) 1.39 of the law as:

“39. The best available techniques are the most effective and advanced stage in the development of the activities and methods of work which indicate the practical suitability of the specific technologies for providing, in principle, on the basis of emission limit values, intended for prevention and, where it is not practically possible to reduce emissions and the negative impact on the environment. Thereby under: - techniques means the technology used and the way the installation is constructed, maintained, used and stopped working, - available techniques means the degree of development of the techniques applied in the respective industrial sector, under economically and technically viable conditions, taking into account the costs and advantages, regardless of whether the techniques are used or developed and / or produced in the Republic of Macedonia, if reasonably available to the operator and - the best means those techniques that are most effective in achieving a high general level of environmental protection in general; ”



During the audit of the State Audit Office, several other findings have been highlighted: - The competent institutions have not adopted the Environmental Monitoring Strategy and the Environmental Monitoring Program, which are important for defining guidelines for the establishment of systematic monitoring, testing and assessment of pollution and conditions, as well as registration and identifying media pollution sources and environmental areas. The employees of the Ministry informed that within the project "Development of monitoring and information system for environmental life", it is planned to adopt a strategy for monitoring the environment in the middle-term. The state network for environmental monitoring has not been established at the local level, nor is a list of scientific and professional organizations that meet the requirements for environmental monitoring established. - Although the content of B-Integrated permit and old approvals prescribes monitoring provisions, after reviewing some of the implemented permits, the audit concludes that for some of the installations no reports were submitted that could confirm that the installation operators do regular monitoring of emissions once a month and / or in accordance with the deadlines set in the permits and submit the data to the Ministry. The audit found that although there are cases where the sources of emissions, ie the use of natural resources are not monitored, according to the content of the IEP, the Commission for Misdemeanors did not act in accordance with legal provisions, ie the legal entity did not act in accordance with the law. The absence of regular and continuous monitoring of the state of the environment does not provide complete data on the assessment of the state of the environment, timely detection of negative processes and practices affecting human health and the environment, improvement of environmental management by forecasting development, assessing the effectiveness of pollution protection measures. authority on possible changes. The determined conditions are the result of the lack of financial resources, human resources and equipment for performing the determined activities on regular and continuous monitoring by the Ministry, municipalities and the City of Skopje.

The Ministry, through the Sector for Cooperation with Local Self-Government and Administrative Supervision, is responsible for supervising the implementation of laws and bylaws in the field of environment, including issues related to the IPPC. For this purpose, an annual plan is prepared which lists the municipalities that will be subject to supervision. The State Audit Office received information from the competent officials that, due to the lack of human resources (three officials involved in the process of monitoring the legality of the work of municipalities in the field of environment), this is done only in a number of municipalities. Inspecting the submitted documentation, we concluded that in the period 2017-2019, the legality of work in the field of environment was monitored in a total of 33 municipalities, for which reports were prepared. Supervisory activities in 2017 were conducted by completing and analyzing the questionnaire. Most supervisory activities, 14 were performed in 2019, 10 in 2018, while 9 were in 2017, without repetition of municipalities in this period. Analyzing the conducted monitoring activities, The State Office Audit office concluded that they aimed to determine whether there are activities for issuing reports and IEPs in the municipality, how employees are organized who perform environmental protection, how many municipalities have a certified environmental inspector and what are his duties. , are they familiar with the possibility of associating with other municipalities, etc. The conclusions and recommendations from the conducted supervision referred to the need for a larger number of employees organized in a special department for the environment, emphasizing the need for trainings (including trainings for issuing B-Integrated permits).

The audit found that the undertaken supervisory activities are partially carried out in order to confirm the legality of the work of municipalities in the field of environment, but a more detailed approach and insight into the documentation that will confirm this is needed. Inspection supervision over the implementation of laws and bylaws in the field of environment is performed by the State environmental inspectorate through state environmental inspectors, while the tasks within the



competence of municipalities are performed by authorized environmental inspectors of municipalities. The State environment inspectorate should supervise the work of authorized environmental inspectors in the application of environmental regulations during inspections. From the conducted research and insight into the Annual Reports on the work of the State environmental inspectorate for 2017, 2018 and 2019, we determined that 17, 16 and 19 inspectors worked in the institution per year. The State Audit Office found that in the period under review, 57 supervisory actions were performed on a total of 15 installation operators holding B-integrated permits. In 2019, 22 supervisory activities were carried out with 8 installation operators, in 2018 their number was 18 with 3 operators, while in 2017 there were 17 supervisory activities with 4 installation operators. In 2019, the inspection conducted in only one plant determined that it performs activities without B-integrated permits, while in 2020 the same conclusion was determined in 2 industrial plants.

The audit found that the supervisory activities were undertaken in accordance with the legal competencies of the State environmental Inspectorate and environmental protection, but it is necessary to strengthen the supervisory activities in a number of facilities. The authorities in the State environmental Inspectorate stated that the reason for this situation is the insufficient number of inspectors. Authorized inspectors are obliged to make a decision before the mayor for the issuance of B-IEP to inspect the installation and its work in order to determine the fulfillment of the conditions from the permit. Also, the authorized inspector has the right to perform inspections within the scope of IPPC related to the established internal supervision, the manner of conducting activities with the plant and whether they are in accordance with the B-Integrated permits, the degree and manner of implementation. operational plans from old approvals, etc. Among other things, plant operators are required to pay a fee for regular supervision of the plant, which is 10% of the amount of the annual fee for holding a B-integrated environmental permit. One of the reasons for the insufficient number of supervisory actions by authorized municipal inspectors is insufficient human resources, and there are cases where the authorized inspector is at the same time the officer who issues the permit. Inspecting the answered questionnaires and submitted documentation, the State Audit Office concluded that the authorized inspectors in the municipalities of Bitola, Kriva Palanka and Kumanovo do not compile an annual report on the inspection for the previous year, the municipality of Veles and Struga, although answered in the affirmative, did not provide evidence. The City of Skopje and the Municipality of Strumica prepare annual reports, but do not submit them to the Ministry. In addition to the remarks, the authorized inspector for the environment of the municipality of Kocani additionally submitted evidence that confirms that the annual reports on the performed inspection supervision for the previous year are in the period 2017-2020. regularly submitted to the Ministry.

In December 2020, the Decision on the establishment of municipal cooperation between the City of Skopje and the municipalities of the City of Skopje for the joint exercise of competencies in the field of inspection was passed. This cooperation aims to combine human and material resources and their efficient and rational use. These conditions indicate that although competencies in the field of supervision and inspection are generally conducted in accordance with the law, their representation in the issuance and implementation of B-Integrated permits and old approvals is insufficient, which affects the effectiveness of prevention measures. and environmental pollution control.

Water sector

There is no available national study of long-term expectations on socio-economic development for 2050. Climate change manifested through extreme events, such as high temperatures and droughts, is expected to increase the drinking water demands. Regular



monitoring is done through the Institute of Public Health¹⁴ (IPH) and the network of Centers for Public Health (CPH) (10) with their laboratories. There are six accredited laboratory in the IPH, and in the CPHs in Tetovo, Kochani, Kumanovi, Bitola and Skopje (ISO 17025), and 5 certified by the Ministry of Health (in process of accreditation for ISO 17025). They are sufficient to handle all the analyses needed under the Directive 98/83. There is a accredited laboratory under the premises of the Public Water Supply Enterprise “Vodovod i kanalizacija”- Skopje and they perform laboratory investigations from the water supplying network in Skopje, according to the Law on Accreditation. The administrative system for ensuring delivery of safe drinking water (DW) has been defined

The water legislative framework

The national water legislative framework in the Republic of Macedonia is comprehensive and regulates, from different perspectives, all the main aspects related to the water services provisions, establishing the institutional set up (responsibility and control). Considering the complexity of the existing legal framework and to ensure the proper functioning of the system, the harmonization between the constitutional principles and the system of laws is necessary, in particular taking into account: the administrative legal framework; the framework laws and regulations in the water management area (i.e.: law on waters, law on environment etc. and related by-laws), special laws in the water management area (i.e.: laws the law on drinking water supply and urban wastewater treatment and the law on communal activities, law on water management enterprise) and special laws in other areas (e.g. Energy law). Based on the Constitution of the Republic of Macedonia all natural resources and services of public interests determined by law are considered as goods of common interest for the Republic and are subject to special protection. The Constitution requires that the conditions under which the specific goods of general interest for the Republic can be used shall be regulated by Law.

The Law on waters (LoW)

The Law on waters is the general law regulating all the aspects related to the water management, it establishes that the waters, as goods of public interest, are the ownership of the Republic of North Macedonia and are subject to special protection. Besides that it prescribes that the water resources management shall be an activity of public interest, carried out in accordance with the provisions of this Law and its regulations. Several other special laws regulate different aspects of the water management and define the institutional set up allocating and defining roles and responsibilities related to the water management (about the complexity of the regulatory framework The Law on determining the prices of the water services is the main regulatory tool for determining the prices of the water services. The aim of this law is to establish a system for water services, which is affordable for the population, taking into account the income per household in the area in which the service is provided; ensure sustainable use of the water services infrastructure, with the ultimate goal of achieving full cost recovery; improve the quality of the services in order to ensure that services are delivered according to the best practices; ensure gradually the complete application of the polluter pays principle, user pays principle and recovery of costs the costs of the resource according to the Law on Waters; improve the efficiency of water services providing the best quality in water services with the minimum cost. This law was recently adopted to ensure to the Public Utilities Companies (PUC) the increasing of their income, currently insufficient to cover operating costs and for allocating adequate funds for the construction of water services

¹⁴ See www.iph.mk/en/



infrastructure. Previously the water services pricing was regulated by the “Law on supply of drinking water and urban waste water drainage and treatment” and the methodology based on that law; the implementation of the law provisions and methodology showed that the prices for the water services are often too low and not in accordance with the prescribed methodology, since the methodology was not binding for the determination of water prices, and there was no entity appointed to control the correct determination of the price for the water service. The previous legal basis was unclear, the requirements for pricing were overlapping or conflicting in several laws and by-laws, there were no clear link established between the activities to be implemented at national level and those at the municipal level or at the level of Public Utility Companies (PUCs). The previous methodology was not obligatory and it contained no mechanism for implementation and supervision. The main problems that the previous tariff system was facing were: the non-application of the user/polluter pays principle and of the costs of the resource, non-coverage of all the costs of the water service providers, especially those related to the collection and treatment of wastewater, non-coverage or partial reflection of the depreciation due to problems regarding the evaluation of fixed assets within the accounting system; frequent revision of tariffs and use of the collected revenues for other municipal or PUCs needs. The general objective of the law is to ensure the establishment of a financially self-sustainable system of water services, which shall provide a high standard of services at reasonable price, in line with the objectives of the National Water Strategy of the Republic of Macedonia and the management plans for river basins.

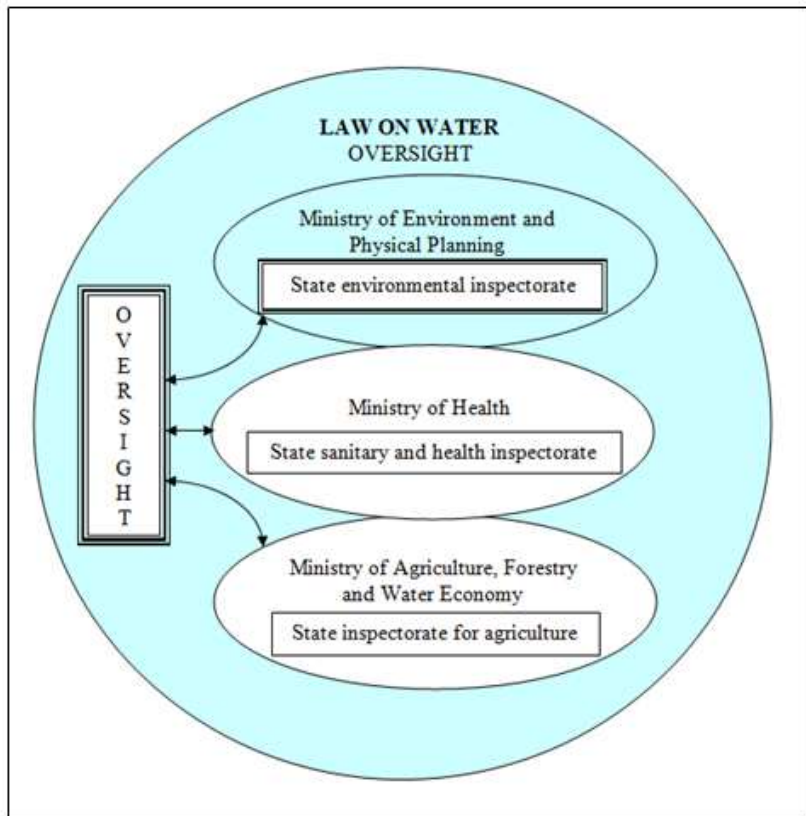
The law on waters is based on several principles:

The user pays principle means that the consumer of water services shall pay for the services of water provision and that the level of payment for the received water service shall increase with the level of used water - The polluter pays principle means that the operator / polluter shall pay for the service for the wastewater being collected and treated, and shall pay for the resulting pollution of water - The cost recovery principle, means that the tariffs charged for the water services shall be such as to allow the water service provider to deliver continuously adequate and financially-sustainable water services - The equity principle means that the price paid for water services shall, over time, be harmonised in the way that the same tariff and quality are applicable irrespectively to the category of the end consumer - The efficiency principle means that the provider of water services shall provide the high quality services with least expenses for the end consumers.

Table 7 : General presentation of Oversight and Supervision bodies in the area of water based on the Law on waters



**GENERAL PRESENTATION OF OVERSIGHT AND SUPERVISION
BODIES IN THE AREA OF WATER BASED ON THE LAW ON WATER**
(„Official Gazette of the Republic of Macedonia“ no. 87/08, 6/09, 161/09, 83/10, 51/11, 44/12,
23/13, 163/13, 180/14, 146/15 и 52/16 and „Official Gazette of the Republic of North Macedonia“
no. 151/21)

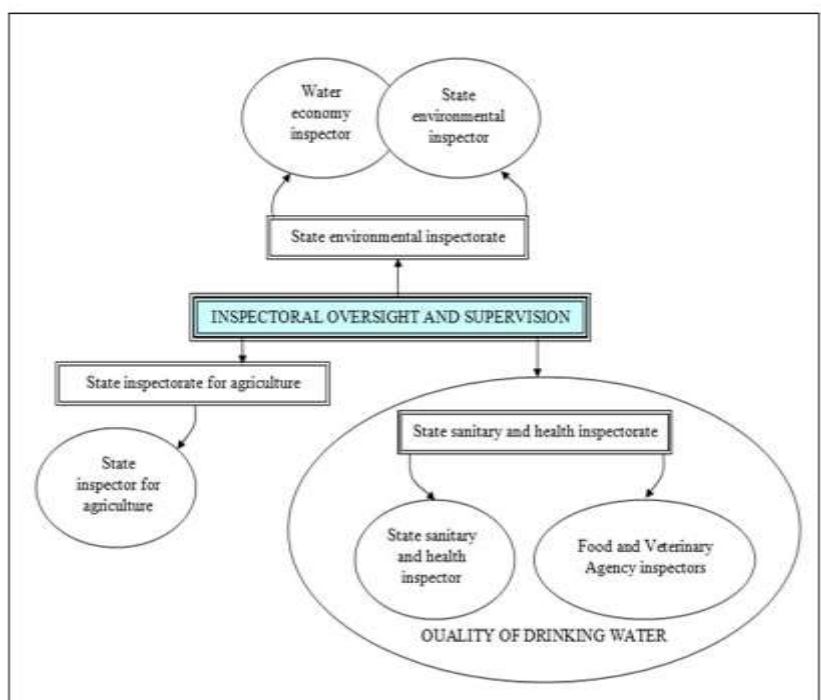


The Table above shows the complexity of involved bodies performing the scope of activities proscribed in the Law of the Waters. The Ministry of Environment and Physical Planning performs general surveillance / oversight activities about the legality of the enforcement of the Law, while the Ministry of Health and the Ministry of Agriculture, Forestry and Water Economy performs rather specific activities on legality regarding the quality of water and agricultural land pollution with nitrates.

Table 8 : Detailed presentation of Oversight and Supervision bodies in the area of water based on the Law on waters

**DETAILED PRESENTATION OF BODIES IN CHARGE OF INSPECTION
OVERSIGHT AND SUPERVISION IN THE AREA OF WATER BASED ON THE
LAW ON WATERS**

(„Official Gazette of the Republic of Macedonia “ no. 87/08, 6/09, 161/09, 83/10, 51/11, 44/12, 23/13, 163/13, 180/14, 146/15 и 52/16 and „Official Gazette of the Republic of North Macedonia“ no. 151/21)



The Table above describes in detail bodies in charge of Inspection, Oversight and Supervision in the area of water based on the Law on water specific enforcement bodies performing inspectoral duties in oversight and supervision through: Ministry of environment and physical planning through the State environmental inspectorate with his State environmental inspectors and water economy inspectors. In places where there is no available State water economy inspectors, the State environmental inspector may perform also activities of the State water economy inspectors. The Ministry of Health through the State sanitary and Health inspectorate in collaboration inspectors from the Food and Veterinary Agency perform the testing of the quality of drinking and bathing water. The Ministry of Agriculture, Forestry and water economy through the State Inspectorate for Agriculture and its State inspectors for agriculture collaborate with the Food and Veterinary Agency inspectors. The State inspector for agriculture provides oversight and supervision on pollution with nitrates.

The multidisciplinary approach to the coordination of the inspection bodies among themselves and by the Inspection Council in order to effectively implement the obligations prescribed in the substantive laws can be seen from the graphs presented. The Water Law provides for obligations to oversee the legality of the implementation of the law through three separate ministries: Ministry of Transport and Communications, Ministry of Health and Ministry of Agriculture, Forestry and Water Economy. In each of these ministries there is an inspectorate which is an independent body, with its own budget and a first line budget user. In performing supervision and supervision within their legal duties, inspectors can act as teams.



Inspection over the application of this Law and the regulations adopted on the basis of this Law shall be performed by the State Inspectorate of Environment through the water economy inspectors and the state inspectors of the environment. The quality control of bathing water and water intended for human consumption is performed by the State Sanitary and Health Inspectorate, through the state sanitary and health inspectors and the Food Directorate through the state food inspectors. Inspection of the application of this Law and the regulations adopted on the basis of this Law in the part of the control of the zones sensitive to nitrates and irrigation and drainage is performed by the State Inspectorate for Agriculture, through the state agricultural inspectors. For the matters within the competence of the municipality, the City of Skopje and the municipalities in the City of Skopje, determined by this Law, inspection supervision over the application of this Law and the regulations adopted on the basis of this Law shall be performed by authorized environmental inspectors of the municipality, authorized environmental inspectors. environment of the city of Skopje and authorized environmental inspectors of the municipalities in the city of Skopje.

Regarding the different authorizations for water rights, the procedure is always based on the Law on General administrative procedure and the right to appeal for the non satisfactory decision about the permit on water use can be submitted to the State Commission for deciding in administrative procedure and employment procedure in the second instance. (Permits: Article 27 (6); Article 33 (3); Article 39 (2); Article 40 (2); Article 44 (5); Article 49 (7); Article 51 (6); Article 82 (2); Article 87 (7); Article 88 (6); Article 142 (8); Article 176 (7); Article 178 (3); Article 180 (2).

Procedures for Misdemeanor sanctions

The procedure related to misdemeanor sanctions is performed on the basis of the Law on general administrative procedure, the Law on environment, the Law on misdemeanors and the Law on the Waters.

Articles 243, 244, 245 are titled "Misdemeanor sanctions for Legal entities". However, they also contain sanctions for physical persons i.e. in all of these articles, physical persons are also subject of misdemeanor sanctions. In article 243, paragraph 5, physical persons are subject to misdemeanor fee of 200 eur in denars counter value. To avoid confusion and legal ignorance it is recommended paragraph 5 of the Article 243 should be singled out in a separate article. The same comment applies also to paragraph 4 in article 244, and to paragraph 4 in article 245. Hence as general recommendation is to change the title of articles or to single out the paragraphs in separate articles in order to avoid confusion and legal ignorance.

In article 244 paragraph (6), ultimate imposition of prohibition to perform a certain activity for the legal entity is proscribed as additional misdemeanor. The same additional sanction is ultimately proscribed for misdemeanors in Article 245 by its paragraph 6.

The article 34 in the Law for misdemeanor does not proscribe or allows such sanction for legal entity. This is type of additional penalty and is proscribed as such in the Article 96 – b, Paragraph 1 (8) in the Criminal code of the Republic of North Macedonia. It is a question of Legal certainty for the Legislator if it is necessary to proscribe penalties as misdemeanor sanctions in *Lex specialis*.

Another question that needs proper answer is whether the competent court may pronounce this criminal penalty as misdemeanor sanction following the procedure from the



Law on misdemeanors (the administrative court or Misdemeanors court).

It is important to stress that article 132 in the Law of misdemeanor also orders that:

“(1) The laws in which misdemeanor sanctions are prescribed shall be harmonized with the provisions of this Law within six months from the day of entry into force of this Law.

(2) The laws in which misdemeanor sanctions are prescribed shall continue to be applied until their harmonization with the provisions of this Law, but no later than six months from the day this Law enters into force.” This time frame has already been exceeded.

It is necessary to harmonize the special laws with the Law on misdemeanors. This recommendation applies to all the laws relevant for this analysis containing misdemeanor provisions.

There is a provision in the Article 49, Paragraph 2 in the Law on misdemeanors that proscribes authorization of the misdemeanor body and authorized Official to impose misdemeanor sanction to up to 250 eur in denar counter value for a critical person and 500 eur in denar counter value for the Responsible person in the Legal entity and for the Official and up to 1000 eur in denar counter value for the Legal entities. The only exception for this frame of value is if it is provided by the legislation of the European Union.

However this exemption applies only for the misdemeanor body. This means that the solution in the article 248 paragraph (1) in the Law on the waters: “(1) For the misdemeanors determined in Article 243 paragraph (1) from item 2) to item 12), paragraph (2), (3) and (4) of this Law, the competent inspectors referred to in Article 229 of this Law shall be obliged to the perpetrator. to propose a settlement procedure to the misdemeanor by issuing a misdemeanor payment order before submitting a request for misdemeanor procedure.” referring to the paragraph (8) in the article 243 allowing the inspector to impose a misdemeanor sanction with value much above the census in article 49 in the Law on misdemeanors acting as authorized Official.

In article 248 paragraph (1) to transfer the solution for procedure for negotiating as in paragraph (2) and in article 243 paragraph (8) to proscribe the procedure for negotiation with the authorized body instead of order of payment issued by the inspector.

Article 248 paragraph (3) in the Law on the waters proscribes that conciliation procedure is to be conducted in accordance with the provisions of the Law on Environment and the Law on Misdemeanors.

Law on Environment, in its article 212-a stipulates that the conciliation is performed by the Commission for deciding on misdemeanors operating according to its rules of procedure (paragraph 7) and the measurement of the amount of the fine according to the Law on Misdemeanors.

The Article 212-A provides the right to appeal to the State Commission for decision-making in the second stage in the field of inspection supervision and misdemeanor procedure.

“(8) An appeal may be filed against the decision of the Misdemeanor Commission, which imposes a misdemeanor sanction, to the State Commission for deciding in the second instance in the field of inspection supervision and misdemeanor procedure.”

The inquisitorial part of the procedure before this Commission is regulated by Article



212-b in the Law on Environment and Amended by a general authorization from the Law on Misdemeanors.

ZZS 212-b (7) stipulates that the only records are kept in the Ministry of Environment, in accordance with the Minister of Justice, which is an additional risk for the misdemeanor records for imposed sanctions.

The Law on determination of prices on water services¹⁵ concerning Supervision, Inspection and Enforcement indicates following tasks:

Supervision, Inspection and Enforcement:

- i. Surveillance over the application of the tariffs for water services
- ii. Surveillance over the application of the regulatory tariffs
- iii. Surveillance over the application of tariffs for water services with the compliance/implementation of the business plan of the provider
- iv. Reviews the compliance of the application of tariffs for water services;
- v. Inspect the operations of the provider of water services in order to implement this law;
- vi. Supervise and monitor the implementation of legal requirements and acts adopted;

The Ministry of Environment and Physical Planning (MoEPP) and the Energy Regulatory Commission (ERC) are responsible of the supervision on the implementation and enforcement of the LSWP. The Energy Regulatory Commission (ERC) is responsible to monitoring/supervise the implementation of the decisions on determining the tariffs for water services and the regulated tariffs for water services. The Water service Providers are required to submit to ERC the reports on the status of implementation of the water tariffs to be assessed. ERC submits an annual report to Parliament on its activities. The State Environmental Inspectorate, through water management inspectors shall verify:

-Whether the provider of water service charges the end users of water services with the tariffs approved by the ERC, and -if the provider of water service has submitted the request for the determination of tariff to the ERC. According to Article 20, if the Regulatory Commission finds that the service provider has not fully implemented the established tariffs, take a mandatory treatment and will determine corrective action and a deadline for their implementation. If the provider does not act upon it, the Regulatory Commission may adopt regulatory tariff for water services. Article 24 entitles the ERC to inspect the water service provider in order to determine whether it acted in accordance with the obligations stipulated by this law.

Institutional fragmentation Institutional fragmentation is the direct cause of many operational gaps and weaknesses that hinder the delivery of core public health functions. Disjointed institutional relationships are reflected in the lack of coordination, supervision and monitoring of different programmes and activities as well as in the incapacity for strategic policy development. The MoH, IPH and CPHs do not participate in any consensus-based processes to determine national public health priorities, which undermines program consistency and budget negotiating power. Decisions are made within silos, so for instance, each CPH uses its own software, making it impossible to share data, and they also procure laboratory equipment independently, leading to overlaps and inefficiencies. Moreover, there are no established mechanisms for horizontal or vertical technical collaboration, complicating the development of standard operating procedures or even minimal coordination in health promotion programs.

¹⁵ See Official Gazette of the Republic of North Macedonia n°07/2016



Administrative and regulatory barriers The interval between proposing a new law and its final adoption and implementation can be several years. Moreover, each institutional level has a different understanding of how laws work in practice, making it difficult to coordinate and streamline these processes. This situation generates serious problems in numerous areas. For example, the Law on Public Administration defines the professional profiles of all civil servants, but the public health discipline is evolving faster than these definitions are updated. On top of that, new staff requests must be approved by the MoH, HIF and the Ministry of Finance, and candidates (often medical physicians) must then be trained in the public health specialty, which can take up to four years. Even under the best circumstances, then, it takes at least a year to fill a vacant position. Aggravating factors like scant interest in the public health specialty among doctors, brain drain, and resource shortages can lengthen this process even further. Administrative and legislative backlogs also cause delays in the area of e-health (e.g. implementation of standard data reporting forms), reference laboratories (e.g. accreditation and regulations on quality criteria), and environmental health (e.g. alignment between regulations and enforcement mechanisms), among others.

3.1.2. Findings, Identification of Risks and Recommendations

Table 9 : Findings, Identification of Risks and Recommendations

	Findings in the Law on environment	Risk	Recommendation
Finding 1	The control mechanisms in inspection supervision on Citizen or Legal entity application via The Law on complaint and suggestion (Article 208(6) and Article 208-a Law on environment) is too long process lasting over 40 days.	The activation of the control process performed by the State inspector must be much shorter due to the risks to the environment and risks that evidence may become corrupted or unavailable.	Recommendation 1- To reduce timing of the process of inspection / supervision in the Law, Article 208 (a)
Finding 2	Article 194 a. The formulation is vague. It is not clear if the rules for appointing the director of the State environmental inspectorate is one mandate or there are no limits for reappointing.	If there is only one mandate, then there is no possibility to apply. If there is no limit reappointing the director of the State environmental inspectorate, the same person can have an unlimited number of mandates.	Recommendation 2 – The Article 194-a should be amended in order fix with clear provision number of possible mandates for the director of the State environmental inspectorate.



Finding 3

The director of the State environmental inspectorate does not have to be licensed as inspectors must be.

Persons with no required competences to be can be at the position of director of the State environmental Inspectorate

Recommendation 3 – Director of the State environmental inspectorate should have appropriate license for being inspector in the state inspectorate or obtain one in the first 2 years of mandate. This will improve the overall situation regarding Discretionary powers in selection of candidates and manner of professional managing with the inspectorate

Finding 4

In the Article 194, the Law on environment does not proscribe required specific fields of education for the position of director of the State environment inspectorate

Person without adequate qualifications/education can be at the position of director of the State environment inspectorate+

Recommendation 4 – In the Law of environment Article 194 b to proscribe specific adequate education for the position of director of Environment inspectorates as it is required for inspectors.

Finding 5

There are no clear profusions on the number of members, their mandate and remunerations for done work of the Commission for best available techniques

Collected money for the Commission for best available techniques cannot be spent in a justified manner. Spending of money for the Commission for for best available techniques is at the discretionary power of the Minister of Environment and Physical planning.

Recommendation 5 - To define clearly the conditions (numbers, mandates, remuneration) for the members of the Commission for best available techniques. The article 104 should be reworked in meaning of number of members in the commission, their fair remuneration, their mandate etc.

Findings in the Law on Waters

Risk

Finding 6

The title of the article 243 of the Law on the Waters is source of confusion

Physical persons can be in ignorance when reading the Law

Recommendation

Recommendation 6 - To avoid confusion the Paragraph IV and V in article 243 should be singled out in a new article specific for physical persons. This recommendation is founded because the Title of the Article 243 is "Misdemeanors sanctions for legal entities.



Finding 7

The Article 244 on the Waters is titled 'Misdemeanor sanctions for legal entities'. Paragraph (4) proscribes fee for a physical person

The Article 244 of the Law on the Waters may lead to ignorance and legal consequences for physical persons.

Recommendation 7- The paragraph 4 of the Article 244 of the Law on the Waters should be singled out in an article for physical persons. The other option is to change the title of the article

Finding 8

The Paragraph 6 of the Article 243 of the Law on Waters proscribes competence for imposing misdemeanor sanctions for the competent court. However, paragraph 8 proscribes that the competent inspector imposes misdemeanor sanctions issuing a misdemeanor payment order.

It is not clear in which case the sanction will be imposed by the court (and which court is competent given the protected public interest (whether the administrative court or the criminal court misdemeanor department)) or the inspector in which case the legal protection will be in the first instance after a lawsuit against the administrative court.

Recommendation 8 - To clarify where is the competence of the competent court and where is the competence of the competent inspector in the Article 243 of the Law on the Waters

Finding 9

Paragraphs 6 and 8 of the Article 243 of the Law on the Waters are in legal collision. Paragraph 6 proscribes that competent body for imposing misdemeanor sanctions from this article is "competent court".

In paragraph 6 the wording is vague because the reader of the text of the Law is not certain if the competent court is the misdemeanor court or the administrative court having in view the situation in the Law on misdemeanors.

Recommendation 9 - To precise which court(s) is(are) competent for conducting misdemeanor procedures in case of Article 243 of the Law on the Waters

Finding 10

Regarding Paragraph 7 of the Article 244 of the Law on the Waters, handling a situation of repeated misdemeanor dangerous to life or human health, having in mind the urgency and necessity of the activity, it is not clear who and in what procedure may or should impose the sanction for temporary ban on performing a certain activity as proscribes in Paragraph 1 (items 1, 3, 4, 5, 6, 8, 13, 14, 19 and 22)

Possible delays in the procedure may have impact on life and human health. It is not clear who will impose this sanction due to the seriousness of the threat to the public interest.

Recommendation 10 - To redraft Paragraph 7 of the article 244 of the Law on the Water in order to clearly order for the competent body in competent procedure to impose the sanction temporary ban on performing a certain activity.



Finding 11

The formulation of the Article 196 is vague. It indicates that for the position of environmental inspector a certificate is needed. There is no mention of diploma. In this sense, the Law on environment is not harmonized with the Law on administrative servants (Article 36 (2)). In this article, candidates must submit certificates/diploma for competent level of education (Alinea 3).

Risk of falsification of certificate

Recommendation 11 -
To modify wording of Article 196 (paragraph 1) Alinea 5. Wording “to provided by certificate” should be deleted.

Finding 12

Articles 243, 244, 245 are titled “Misdemeanor sanctions for Legal entities”. However, they also contain sanctions for physical persons i.e. in all of these articles, physical persons are also subject of misdemeanor sanctions. In article 243, paragraph 5, physical persons are subject to misdemeanor fee of 200 eur in denars counter value. To avoid confusion and legal ignorance it is recommended paragraph 5 of the Article 243 should be singled out in a separate article. The same comment applies also to paragraph 4 in article 244, and to paragraph 4 in article 245.

Confusion and legal ignorance

Recommendation 12 To change the title of articles Articles 243, 244, 245 or to single out the paragraphs in separate articles in order to avoid confusion and legal ignorance.

3.2. OVERSIGHT IN THE LAW ON URBAN PLANNING

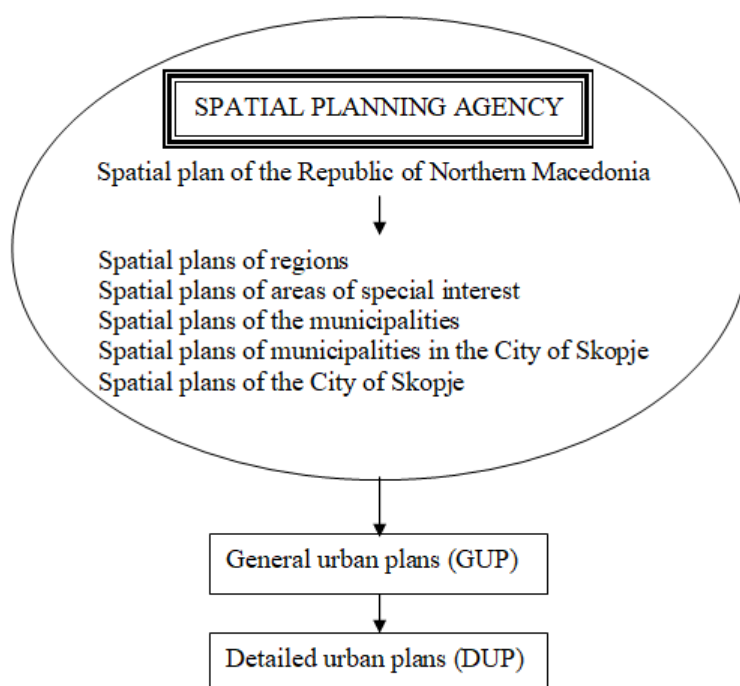
3.2.1. Overview and Analysis

The Law on Urban Planning defines **spatial planning** as interdisciplinary activity for managing the spatial dimension of the sustainability of human society, which regulates the purpose and manner of use of space, which reflects the optimal economic, social and environmental policies for balanced spatial development (Article 2(1) point 37). The law defines **urban planning** as planning urban and urban-architectural activity for spatial development and implementation of spatial plans with physical shaping and arrangement of the boundaries of settlements and buildings outside settlements, as well as the organization, purpose, manner of use of space and land and the manner and the conditions for construction of the planned buildings (2(1) point 52). The Law defines **public interest** regarding the space covered by the urban plans as public interest is the arrangement and humanization of the space, protection and promotion of the environment and nature, as well as the preservation of the natural and cultural values of the space. The Law places the public interest above the private interest in Article 5 (1) with the obligation that the factors must protect the public interest which is a priority while the private interest is protected by law 5 (3). Further the law **prioritizes public above private interest** defining that the urban planning obligatorily protects the public interest which is a priority, while the private interest is provided in accordance with the law (5(3)). In understanding the priorities/particularities of the public interest the law provides **goals** as 1. Balanced spatial development; 2. Rational arrangement and use of space; 3. Creating and improving the conditions for humane living and working of the citizens; 4. Overcoming the urban barriers of persons with disabilities; 5. Sustainable spatial development; 6. Preserving the quality and improving the environment and nature; 7.



Tackling climate change; 8. Preservation and protection of the immovable cultural heritage and 9. Safety from natural and technological disasters and accidents. The goals of the urban planning are **realized with the application of the principles** of the urban planning and the arrangement of the space in the process of preparation, adoption and implementation of the urban plans, as follows: 1. Integral approach in planning; 2. Care and development of regional peculiarities; 3. Realization of the public interest and protection of the private interest; 4. Publicity in the procedure for preparation, adoption and implementation of the plans; 5. Inclusiveness and participation in the procedure for preparation, adoption and implementation of plans; 6. Horizontal and vertical alignment and coordination in planning and 7. Respecting the scientifically and professionally established facts and standards.

Table 10 : Presentation of hierarchical harmonization of Spatial and Urban planning



The Spatial planning agency prepares a Spatial Plan of the Republic of North Macedonia. The Table above present hierarchical harmonization of Spatial and Urban planning. The plans of the spatial and urban planning system are hierarchically and horizontally harmonized. The spatial plan of the Republic of North Macedonia, together with the spatial plans of the regions, the spatial plans of areas of special interest and the spatial plans of the municipalities and the city of Skopje are plans of higher level of planning than the urban plans. General urban plans re plans of lower level of planning and should be in accordance with spatial plans. Detailed urban plans are plans of lower level of planning than the general urban plans and should be in accordance with the general urban plans. Adjacent plans are plans of the same level of planning, which must be mutually harmonized.

For harmonization of the urban plans from article 10¹⁶ paragraph (1) items 1, 3, 4 and 5 of this law, with the plans from higher level of planning, **the body of the State**

¹⁶ Article 10

administration responsible for performing the works in the field of spatial planning, issues conditions for space planning. (7(1)) The law defines **Participative body** formed in and by the local self-government unit for providing greater involvement, participation and contribution of citizens as well as the public in the process of urban planning, by including representatives of the civil and non-governmental sector from the local community in the work of the body (2(1) point 30). The plans of the spatial and urban planning system are hierarchically and horizontally harmonized. The spatial plan of the Republic of North Macedonia, together with the spatial plans of the regions, the spatial plans of areas of special interest and the **spatial plans of the municipalities and the city of Skopje** are plans of a higher level of planning than the urban plans, which are plans of a lower level of planning and should be in accordance with them (4). In other words Detailed urban plans must comply with the General urban plan, that also refers to all other lower types of plans to comply with the higher level plans, thus all of them must comply with the Spatial plan of the Republic of North Macedonia. *This actually means that participants in the body may only influence the lower levels of urban planning (Detailed urban planning Acts) bound by the conditions of the state administration body proscribed on its discretionary powers.*

In accordance with the Article 12, Municipality Council make decisions about the budget of the Municipality in a procedure proscribed in the Law and by the rulebook. Depending of the Funds in the budget, the Council of the Municipality adopt annual program for financing Urban plans and decides about the degree and elaborates of development of General urban plan. This refers also to detailed Urban plans. There is no clear direction for the Mayor if the General Urban plan shall be developed in form and contents as Urban plan and all this depends on the amount of money from the municipal budget dedicated to this activity. We suggest that the legislator should proscribe a relevant percentage for development of Urban plans regarding the standard time-frame to complete implementation of the detailed Urban plans.

The making of Urban Planning is financed by Local Self-Governments and the State budget. Also it may be initiated and financed by private individuals (legal entities and native persons) if they need/have to do so. Applicable to types 1, 2, 3, 4. If the competent authorities have obligation proscribed by this Law to issue decisions and other acts in the process of preparation and adoption of urban plans, do not issue them within the set deadlines, it shall be considered as the decision or act has been issued and process of preparation and adoption on the urban plan can continue. Damages that or may arise from not respecting their obligation are burden of the passive authority(s). (25) (i.e. 42).

Inspection, Oversight and supervision for the purposes of compliance of Legality and respect of obligations proscribed in the Law for Urban planning are performed by the State Urban inspectors employed in the State inspectorate for construction and urbanism.

Concerning supervision the Law on Urban planning indicates:

In the Section 7, the article 82 indicates that Supervision over the implementation of the of this Law and the regulations adopted on the basis thereof shall be performed by the

(1) Depending on the scope of urban planning, as well as whether the subject of planning is of state or local importance, the following urban plans are adopted: 1. **General urban plan**; 2. Detailed urban plan; 3. **Urban plan for the village**; 4. **Urban plan for out-of-town settlement** and 5. **Urban plan for areas and buildings of State importance**.

(2) The urban plans referred to in paragraph (1) items 1, 2, 3 and 4 of this Article are plans of local importance, and the urban plan referred to in paragraph (1) item 5 of this Article is a plan of state importance. Plans are valid until replaced with new one (23(1)). Planning period for 1, 3, 4 and 5 is 10 years, and 5 years for 2. Decision for making new or alterations to the existing one are made in period of 36 or 18 months prior to expiration of the planning period, respectively. The procedure for making and adopting the plans is 36 months for 1, 3, 4, 5 and 18 months for 2. Exception is 1 (GUP) for City of Skopje 48 months.



body of the state administration responsible for performing the activities in the field of spatial planning. This article is linked with Law on inspection. Oversight of application of the Law is right and obligation of the relevant Ministry in this case Ministry for Transport and communication. (Article 82). This Law is also linked to following laws: Law on establishment of a State Commission for decision-making in the second level in the field of inspection supervision and misdemeanor procedure / independent; Law on the state inspectorate for local self-government / Law on local self-government; Law on establishment of a state commission for decision-making in administrative procedure and employment procedure in second level / independent.

Conditions to be State Urban Inspector are defined in Article 83. This article describes also the State Inspectorate for Construction and Urbanism and State Urban Inspector. The State Inspectorate for Construction and Urbanism is within the Ministry of Transport and Communications (MTC). Following articles, particularly article 85 (1) indicates that Inspection of the preparation, adoption and implementation of urban plans is performed ex officio, based on the inspection and schedule of the inspectorate or on the basis of a proposal for inspection submitted by a state body, municipality, municipality in the city of Skopje and the city Skopje, as well as by any interested legal and natural person. (5) **Failure to act upon the decision of the inspector** from paragraph (3) of this Article is considered a **serious violation of the official duty** of the responsible person of the entity from paragraph (2) of this Article, and the inspector is obliged the legal entity and the authorized person, to oblige them to execute the decision by imposing a fine in the amount of EUR 300 in MKD equivalent for the authorized person from the responsible person in the legal entity and EUR 1,000 in MKD equivalent for the legal entity.(6) If the decision referred to in paragraph (3) becomes final, and the inspection established that the provisions of this Law have been violated by an act for which a criminal or misdemeanor qualification has been established by law, the inspector shall be obliged to file criminal or misdemeanor charges with the competent authorities. (3) Inspector makes Minutes and delivers Decision for performed inspection duties, with findings and eventually ordered actions for compliance with in certain time frame. (4) Decision is subjected to second level appeal.

The article 86 is dedicated to Inspection of the implementation of the urban plans. If during the inspection of the procedures for implementation of the urban plans from articles 57, 58, 59, 60, 61, 62 and 63 of this law, as well as the procedure for issuing a certificate for urban compliance from article 64 of this law, the inspector with a report on the ascertained situation determines a violation of the provisions of this Law in the subject of the inspection, is obliged to make a decision annulling the act with content contrary to the provisions of this Law or which is conducted by a procedure contrary to this Law and the regulations adopted on based on it. (4) If the basis for annulment of the acts that are subject to inspection were an urban project, ie the conceptual design that is an integral part of the urban project, which have been determined to have been made contrary to this Law and the regulations adopted on its basis, the inspector is obliged to submit a proposal to the state administration body responsible for performing the activities in the field of spatial planning for revoking the license of the legal entity that prepared the urban project, ie the conceptual design, as well as the license of the legal entity that prepared the expert report. Revision of the urban project, and to submit to the Chamber of Authorized Architects and Authorized Engineers a proposal for revoking the authorization of the natural person who is a signatory of the urban project, ie the conceptual design or the expert revision of the urban design. The decision is subject to appeal.

The article 87 describes the supervision over the legality of the work of the municipal



bodies, the municipalities in the City of Skopje and the City of Skopje. (1) The supervision over the legality of the work of the bodies of the municipalities, the municipalities in the City of Skopje and the bodies of the City of Skopje in the process of preparation, adoption and implementation of the urban plans shall be performed by the body of the state administration responsible for performing the works in the field of spatial planning.

Misdemeanor provisions are presented in Section 8 of the Law starting from article 88

The article 89 indicates that (1) an amount of 2,000 euros in denar counter value shall be imposed for a misdemeanor on the mayor, ie the person authorized by the mayor and the president of the municipal council, the municipality in the city of Skopje, ie the city of Skopje, if he manage the procedure for preparation and adoption of urban plans contrary to the provisions of this Law or by inaction or non-performance of the competencies prescribed by law, the competencies, duties or obligations obstruct.

The article 91 explain who is the competent authority for conducting the procedure. Competent body and conducting misdemeanor procedure Article 91 (1) The provisions of the Law on Misdemeanors shall be appropriately applied for misdemeanors and misdemeanor liability.(2) The competent body for conducting the misdemeanor procedure for the misdemeanors determined by this Law is a competent court. This article is linked to the Law on Misdemeanors.

3.2.2. Findings, Identification of Risks and Recommendations

Table 11 : Findings, Identification of Risks and Recommendations

	Findings in the Law on urban planning	Risk	Recommendation
Finding 1	<p>Article 22</p> <p>In Article 22 regarding Paragraphs 8 and 9 the proscribed time for making and adoption of Urban plans is proscribed in Paragraph 8, eighteen months for making and adoption of detailed Urban plans ; thirty-six months for making and adoption of General Urban plans with exemption of forty-eight months making and adoption of General Urban plans of the City of Skopje.</p>	<p>If these time-frames are not respected, there is no responsibility. The culpability proscribed in article 89 for the Mayor and the President of the Municipality Council cannot be taken into account in case of non-respect of the proscribed time-frame because of the financial consequences for the municipal budgets.</p>	<p>Recommendation 1 - Municipalities should always reserve a percentage of their budgets for the activity making and adoption of Urban plans to avoid breaking the time-limit set for this activity.</p>



Finding 2

Article 23

In the Article 23, there is a weakness in the procedure for suspension of Urban plans.

In Paragraph 6 there is a risk in the Law regarding the requested opinion from the Minister if the Minister issues a negative opinion. There is no procedure for the Mayor of the Municipality to contest the negative opinion of the Minister. This is also truth in case if the Minister does not issue any opinion in the proscribed time-frame, even if he pays the fee of 2000 eur. proscribed in Article 89 (paragraph 2, point 5). There is no efficient solution if the Minister does not issue the opinion in the timely manner.

Recommendation 2 To Amend Article 23, paragraph 6 with a right to appeal on negative opinion of the Minister. In case the Minister don't reply in a time-frame of 15 days, to consider that the opinion is positive.

Finding 3

Article 48

In Article 48, Paragraph 2 it is not stated how the selection procedure is conducted for the selection of the Legal entity that will make the expert revision for Urban plans from Article 10, Paragraph 1, points 1,2,3, and 4.

There is a weakness in the Law that may represent risk for abuse of discretionary power

Recommendation 3 - In Article 48, Paragraph 2 it should be clearly stated how the selection procedure is conducted for the selection of the Legal entity that will make the expert revision for Urban plans from Article 10, Paragraph 1, points 1,2,3, and 4. Additional recommendation is to harmonize the procurement for this service with the Law on Public procurement.



Finding 4

Article 50

The practical implementation of the obligations rising from the Article 50 are not completely Obeid inspite of the threat from misdemeanor sanction proscribed in the Article 90, Paragraph 1.

Lack of transparency

Recommendation 4 - In order to strengthen the transparency in the preparation of Urban plans, it is suggested to proscribe an obligation of the body responsible for the procedure for preparation and adoption of the plan to not continue the preparation and adoption if the public presentation and public survey were not conducted through the system of e-urbanism. This is due to the fact that during the interviews with municipal officials it became clear that majority of municipalities are not participants in the e-urbanism system, which jeopardizes the transparency of the whole procedure and reduces the trust of citizens for the purposes of Urban plans.

Finding 5

Article 63

The Article 63, Paragraph 5 and 6 does not provide a clear solution for protection of the owner of the construction land from negative opinion of the Commission for Urbanism.

There is no legal protection for the owner of the construction land to file a complaint to contest the negative opinion of the Commission for Urbanism.

Recommendation 5 - To proscribe a solution for secondary examination in justification in delivering negative decision. This may be done by the Agency for Spatial planning.



Finding 6

Article 81

The Article 81 is not harmonized with the Law on Public procurement

Risk of abuse of discretionary rights in proscribing the tariffs for reimbursement of Legal entities in making Urban plans and selection of participants who prepare Urban plans.

Recommendation 6 - The activities of the Ministry of Transportation in the direction of harmonization of the Article 81 with the Law on Public procurement through adoption of Legal amendments to the text of the Article are strongly supported. This harmonization help to avoid the risk of abuse of discretionary rights for selection of participants that provide services for preparation of Urban plans.

Finding 7

Article 85

In the Article 85, the Paragraph 4 does not indicate where the complaint should be submitted. The complaint against the decision of the Inspector adopted in administrative procedure may be submitted to the State commission for deciding in the second instance in the field of inspection and misdemeanor procedure or the State commission in deciding in administrative procedures and employment procedure in the second instance.

The main risk is that the time-frame to submit a complaint may not be respected without the fault of parties.

Recommendation 7 - To clearly state the name of the authorized body that is making decision in the second instance.

Finding 8

Article 85

In the Article 85, Paragraph 5 obligates the Inspector to issue mandatory punishment of 300 eur in denar counter value for the authorized person and 1000 eur in denar counter value for the Legal entity. The Inspectors may not pronounce punishments but sanctions for misdemeanors.

Punishments may be only pronounced in a judgment reached in a Court procedure and this Article don't take this into account which presents Legal uncertainty and non-compliance with the legislation.

Recommendation 8 - In the Article 85, to change words « mandatory punishment » into « sanction »

Finding 9

Article 85 (4) and Article 86

The Article 85(4) has no clear provision who is second level authority for addressing appeals. As a result of the veto in the Article 132 of the Law on Misdemeanors the formulation in 85(4) is vague and unclear where appeals should be addressed (filed). This concern also Article 86(2).6

Legal uncertainty. Even that in accordance to the Law on establishment of a State Commission for decision-making in the second level in the field of inspection supervision and misdemeanor procedure is the right authority for appeals to be filed to; it is not possible to address the appeals because of the veto in Article 132 of the Law on Misdemeanors.

Recommendation 9: In order to define clear conditions in the legislation for licensing for performing revisions of Urban plans Amend the Article 132 of the Law on Misdemeanors by removing the veto or name the new entity where current appeals may be submitted.

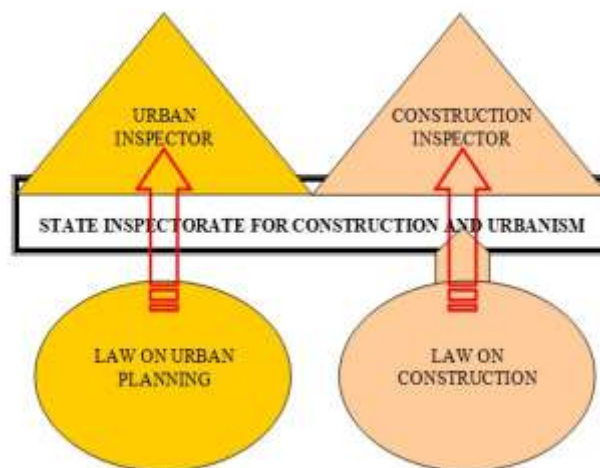


Finding 10	<p>Article 86</p> <p>In the Article 86, the Paragraph 2 does not indicate where the complaint should be submitted. The complaint against the decision of the Inspector adopted in administrative procedure may be submitted to the State commission for deciding in the second instance in the field of inspection and misdemeanor procedure or the State commission in deciding in administrative procedures and employment procedure in the second instance.</p>	<p>The main risk is that the time-frame to submit a complaint may not be respected without the fault of parties.</p>	<p>Recommendation 10 -</p> <p>To clearly state the name of the authorized body that is making decision in the second instance.</p>
Finding 11	<p>Article 103 (3)</p> <p>The article is vague. Modalities for examination of capacities for performing revisions of Urban plans are not clear because of the article 67 (par. 13) which indicates unclear conditions with the wording “appropriate professional results”.</p>	<p>Conditions for performing revisions of Urban plans are not clearly defined in the legislation and there is a space for abuse of discretionary power in the Chamber of authorized architects and authorized engineers.</p>	<p>Recommendation 11:</p> <p>The wording “appropriate professional results” needs to be supported measurable and comparable.</p>

The Table below shows the position of the State Inspectorate for Construction and Urban Planning. The Inspectorate is a body of the Ministry of Transport and Communications, with the capacity of a legal person, with own budget account as a first line budget user. The inspectorate independently conducts employment procedures for his employs. The inspectorate is headed by a director appointed by the Government of the Republic of North Macedonia. In accordance with the Law on Construction, the Inspectorate performs inspection supervision on the entire territory of the country, with direct jurisdiction over buildings of the first category, and supervision / control over authorized construction inspectors in the Units of local self-government responsible for buildings of the second category. The Inspectorate through the urban inspectors checks the compliance of the preparation, adoption and implementation of the urban plans with the Law on Urban Planning

Table 12 : Position of the State Inspectorate for Construction and Urban Planning.





The Table above present The State Inspectorate for Construction and Urbanism functions within the Ministry of Transport and Communications, as an independent body, with its own budget and as a first-line user of budget funds.

The Director of the Inspectorate is appointed by the Government of the Republic of North Macedonia. The conditions that this person must meet are set out in the Law on Construction.

The inspectorate has urban inspectors and construction inspectors. These officials fulfill the obligations set by their substantive laws, set out in the Law on Urban Planning and the Law on Construction. One of the responsibilities of the state inspectorate is to supervise the legality of the work of the authorized urban and construction inspectors in the local self-government units and the fulfillment of their obligations related to the supervision.

3.3. OVERSIGHT IN THE LAW ON CONSTRUCTION

3.3.1. Overview and Analysis

Public interest

The Law on expropriation¹⁷ in it's Article 4 gives the definition of Public interest:

Definition: Public interest determined by this law is the arrangement, rational use and humanization of space, protection and promotion of the environment and nature by building facilities and performing works of importance for the Republic and the units of local self-government, provided by the acts for spatial planning.

¹⁷ See Law on expropriation, "Official Gazette of the Republic of Macedonia" No. 95/12, 131/12, 24/13, 27/14, 104/15, 192/15, 23/16 and 178/16 and "Official Gazette of the Republic of North Macedonia" No. 122/21)

In addition, the Article 5 indicates;

“1) Public interest shall be determined for:

- construction of facilities and execution of works of importance for the Republic of Macedonia and*
- construction of facilities and performance of works of local importance.*

(2) Public interest shall be determined for confiscation of construction land on which natural persons have the right to use, and which according to the spatial planning acts that define a construction plot is outside the defined construction plot, and which may not be subject to of privatization, in accordance with the Law on Privatization and Lease of State-Owned Construction Land.”

The Article 6 gives precise list concerning (1) Public interest of importance for the Republic of Macedonia. The Article 7 defines “Public interest of local importance” It is determined due to:

- construction of facilities and performance of works for the needs of the municipal public services in the field of education, upbringing, sports, science, culture, health and social protection,
- construction of transmission lines with voltage level up to 35 KV and substations with voltage level up to 10 KV,
- construction of tram lines,
- construction of fire protection facilities,
- construction of local water supply and sewerage systems with treatment systems,
- construction of stadiums and sports halls with a capacity of up to 10,000 spectators,
- building multi-storey garages and
- construction of facilities for general use, as follows: municipal roads, squares, public parks, markets, public parking lots and cemeteries.

Concerning supervision of the Law on Construction indicates:

The Law on Construction presents Inspections in the Article 128 as follow: (1) The activities of inspection supervision over the application of this Law and the regulations adopted on the basis of this Law shall be performed by construction inspectors of the State Inspectorate for Construction and Urban Planning (hereinafter: construction inspectors) and construction inspectors of the municipalities in the City of Skopje (hereinafter: authorized construction inspectors). (2) A construction inspector shall perform inspection supervision over buildings of the first category, and an authorized construction inspector shall perform inspection supervision over buildings of the second category referred to in Article 57 of this Law. (3) The inspectors referred to in paragraph (1) of this Article shall perform inspection supervision in accordance with the provisions of the Law on Prohibition and Prevention of Performing Unregistered Activity.

The article 137 related to **decision of the inspector** indicates « (1) When performing the inspection, the inspectors referred to in Article 128 paragraph (1) of this Law shall impose inspection measures for elimination of the determined irregularities and deficiencies in accordance with the Law on Inspection Supervision.(2) If during the inspection the inspector determines deficiencies, and in case when he assesses that it is justified, he/she can issue a reprimand with a decision and determine a deadline within which the subject of inspection supervision is obliged to eliminate the irregularities and deficiencies determined by minutes.(3) When the identified irregularities and deficiencies can cause or cause immediate danger to life and health of people or financial damage or damage to property of greater value or endangering the environment or endangering the public interest, the inspector with a decision shall impose an inspection measure, such as compel, order, prohibition and other



measure, if determined by a special law, which will most appropriately achieve the purpose of the inspection.

The articles 127 of the Law on Construction describes Inspection's supervisions. It indicates that "The supervision over the implementation of this law and the regulations adopted on the basis of this law is performed by the body of the state administration responsible for performing the activities in the field of spatial planning ». The article 128 (1) introduce two categories of Inspections as follow: (1) The works of inspection supervision over the application of this Law and the regulations adopted on the basis of this Law shall be performed by construction inspectors of the State Inspectorate for Construction and Urban Planning and construction inspectors of the municipalities and municipalities in the City of Skopje. In following points of the article 128 tasks of Inspectors are presented : « (2) A construction inspector shall perform inspection supervision over buildings of the first category, and an authorized construction inspector shall perform inspection supervision over buildings of the second category referred to in Article 57 of this Law » and in addition « (3) The inspectors referred to in paragraph (1) of this Article shall perform inspection supervision in accordance with the provisions of the Law on Prohibition and Prevention of Performing Unregistered Activity ». This statement means that only legal entities that are registered for construction, and obtained proper licenses may perform construction works.

The Article 128 a indicates that the State Inspectorate for Construction and Urbanism has the capacity of a legal entity with its own budget account as a first line budget user, independently conducts employment procedures in accordance with law and decides on employment rights and obligations. In this context and in accordance with rules for the State Inspectorate for Construction and Urbanism Employees are B or V (category administrative officials. In line with the Article 128 b the Government appoints and dismisses the director (1) of the inspectorate after public announcement (2). Competences are proscribed in (3). Competences of the elected person in concordance to (3) may be lower than the competences of the employees (construction inspectors), i.e. does not have license A or B to be inspector. This is a risk in the law which imposes serious risks in implementation/practice.

The article 131 indicates rights and duties of a construction inspector: (1) A construction inspector, ie an authorized construction inspector within the competencies determined by this and other law, has the right to perform inspection supervision during the construction, as well as inspection of a facility when the structural elements are converted in it in terms of their mechanical resistance, stability and seismic protection, as well as when converted from residential to commercial space and vice versa. (5) If the competent construction inspector ascertains that some of the conditions for revocation of the license provided in Article 38 paragraphs (4) and (5) of this Law have occurred, as well as for revocation of authorization provided in Article 39 paragraphs (4) and (5) from this Law, is obliged to submit a proposal for revocation of the license, ie the authorization with a report for the ascertained irregularity to the body competent for revocation of the license, ie authorization.

The article 132, indicates way and rights how inspectors work and authorizations they can perform. If not clearly elaborated in the administrative act for certain authorization may be a risk in relation to discretionary power. The article 133 (3) refer to the Law on protection of cultural heritage as well as the article 134 (3). For these two articles the need for approval has no time limits to inform the body of the state administration responsible for performing the activities in the field of culture.



The article 137 (3) stipulates that « When the identified irregularities and deficiencies can cause or cause immediate danger to life and health of people or financial damage or damage to property of greater value or endangering the environment or endangering the public interest, the inspector with a decision shall impose an inspection measure, such as to charge, order, prohibit and other measure, if determined by a special law, which will most appropriately achieve the purpose of the inspection». In this article the inspector may directly impose inspectoral measure in accordance with other laws. The article 137 (4) indicates that «Against the decision of the inspectors referred to in Article 128 paragraph (1) of this Law, an appeal may be filed within 15 days from the day of receiving the decision to the competent body for deciding in the second instance». This is in the Law establishing a state commission for decision-making in the second level in the field of inspection supervision and misdemeanor procedure. The article 137 (4) indicates that “against the decision of the inspectors referred to in Article 128 paragraph (1) of this Law, an appeal may be filed within 15 days from the day of receiving the decision to the competent body for deciding in the second instance”. The inspectors may impose different solutions to the notified problem(s) with their decision(s). The legal instruction for the right to appeal as legal remedy. **The appeal must be submitted to the above mentioned Second instance Commission.**

The article 145 (1) indicates that “If the construction inspector determines that the authorized construction inspector does not perform the activities prescribed by this Law, he / she is obliged to immediately submit a written notification to the mayor of the municipality for non-execution of the works’. In this situation if the Local Self Government does not have authorized building inspector than his duties are (may be) performed by building inspector However the taxes achieved for building permits go to state budget instate staying for the Local Self Government.

The article 146 indicates (1) When performing the inspection, the inspectors referred to in Article 128 of this Law shall be obliged to check whether the administrative acts issued on the basis of this Law are in accordance with it and if they determine that the administrative acts issued contrary to this Law, they shall be obliged to submit a written proposal for annulment of those administrative acts with a report on the established situation, to the body that adopted them. (2) The competent body that has adopted the administrative act is obliged to act upon the proposal and within eight days to adopt a decision by which it will annul the issued administrative act or a decision by which it will reject the proposal for annulment. This is in line with the Law on general administrative procedure.

The article 149 stipulates that “1)When the body responsible for performing the activities in the field of spatial planning, ie the construction inspector determines that the municipality, ie the authorized construction inspector does not adopt the acts determined by this Law within the stipulated deadlines, they shall submit a proposal for inspection to the State Administrative Inspectorate who is obliged to perform inspection in accordance with the Law on Administrative Inspection » ; This is linked to the State administrative inspectorate and the Law on administrative inspection.

Concerning Misdemeanor provisions the Law on Construction indicates:

The article 150 (1) (3) entrust the design, revision, construction and supervision over the construction of the buildings of the first category from Article 57 of this Law to a person who does not meet the conditions in accordance with this Law for performing that activity (Article 13 paragraph (2)). The article 151 indicates also Constructions of category (with Reference to Article 57). The article 163b indicates that “(1) the competent body for conducting the misdemeanor procedure for the misdemeanors determined by this Law is a competent court,



except for the misdemeanors determined in Article 151-b paragraph (3) of this Law, Article 160-a paragraph (2) of this Law and Article 162 paragraph (2) of this Law, for which the competent body is a commission for misdemeanors formed by the minister who manages the body of the state administration responsible for performing the activities in the field of spatial planning (currently the Minister for Transport). (2) Against the decision of the Commission referred to in paragraph (1) of this Article, a procedure may be initiated before a competent body in accordance with the Law on Misdemeanors. Competent body in paragraph (2) is the State Commission for deciding in the second instance in the field of inspection and misdemeanor procedure”.

Concerning the misdemeanors, the Article 68 from the Law of Misdemeanor indicates suspensive action: “(4) the appeal referred to in paragraph (1) of this Article shall postpone the execution of the decision, except when the appeal is filed by a foreigner. (6) The lawsuit referred to in paragraph (5) of this Article shall postpone the execution of the decision”. The consequence is that the Law on Misdemeanor requests in Article 132 that all related laws must be harmonized with provisions in this Law. In meanwhile, until harmonization, there is a conflict in the legislation that.

The appeal and the lawsuit postpone the execution of the Decision in misdemeanor procedure. However, Article 137 (5) states that the appeal does not postpone the execution. The Article 131 (1) stipulates that “An appeal against misdemeanor decisions made by the misdemeanor body may be submitted to the State Commission for deciding in the second instance in the field of inspection supervision and misdemeanor procedure until December 31, 2020. This is not clear provision on to which authority the appeals on the inspectorial misdemeanor decisions the party may appeal. The causes are Back log of obsolete misdemeanor cases. The Article 131(2) indicates that the cases after the initiated procedures on appeal before the State Commission for deciding in the second instance in the field of inspection and misdemeanor procedure that will not end within the deadline from paragraph (1) of this Article, shall be handed over and will continue before the Administrative Court.

3.3.2. Findings and Identification of Risks

Table 13 : Findings, Identification of Risks and Recommendations

	Findings	Risk	Recommendation
Finding 1	<p>Article 13-b</p> <p>Paragraph (5) allows the procedure with only one bidder.</p> <p>In eventual court case, the week contracts may impose significant burden to state budget. They must contain risk management clauses for cases when municipality change some building or land parameters with implementation or changes in GUP or DUP.</p>	Corruption, abuse of discretionary right	<p>Recommendation 1</p> <p>The article 13-b shall be Rephrase to be harmonized with the Law on public procurement</p>



Finding 2

Article 128-b

The competences of the elected person for the Director of the State Construction Inspectorate in concordance to (3) may be lesser than the competences of the employees (construction inspectors), i.e. does not have license A or B to be inspector

There is no requirement for the director of the State construction inspectorate to have inspector License

Persons with no competences can be appointed at the position of director of the State construction Inspectorate

Recommendation 2:

Director of the State construction inspectorate should have appropriate license for being inspector in the state inspectorate or obtain the appropriate license in one in the first 2 years of mandate. This will improve the overall situation regarding Discretionary powers in selection of candidates and manner of professional managing with the inspectorate.

Finding 3

Article 128-b

The duration of mandate for the director of construction inspectorate is not indicated

Unlimited duration of mandate of the director of construction inspectorate open the possibility to stay for unlimited number of years at the position.

Recommendation 3: To clearly define in the legislation the duration of mandate for the position of director of construction inspectorate and number of mandates.

Finding 4

Article 132

Formulation of the article 132 paragraph 3 is too vague in the part "undertake other works in order to prevent the construction if the construction is performed contrary to this Law".

Article 132 gives unlimited discretionary powers to the State inspector for construction and authorized inspector for construction, and contributes to legal uncertainty.

Recommendation 4-a: To clearly define in the legislation limits of the scope of discretionary power of the State construction inspector and "authorized construction inspector" regarding the part concerning "undertake other works in order to prevent the construction if the construction is performed contrary to this Law".

Recommendation 4-b: In the case when inspector decide to undertake other works in order to prevent the construction if the construction is performed contrary to this Law, the entities involved in the construction must have right for prompt suspendable legal remedy.



Finding 5

Article 133 (2)

Formulation is too vague. There is no frame for discretionary power of State construction inspector and Authorized construction inspector

There is a risk of abuse of discretionary powers regarding deadlines that the State construction inspector and authorized construction inspector can prescribe and contributes to legal uncertainty, and unequal treatment.

Recommendation 5: To define a time-frame in the legislation for use of discretionary powers of State construction inspector and authorized construction inspector for every situation listed in paragraph 1 of the article 133 of the Law on construction

Finding 6

Article 133 (3)

The article is unclear. There is no deadline for the State construction inspector to inform the Ministry of culture that he issued an order to termination of construction when the building is listed in the National register for cultural heritage

Possible deterioration and unrecoverable damage of buildings listed in the National register for cultural heritage due to slow reacting of the involved entities.

Recommendation 6: To define a time-frame in the legislation for inspector to inform the Ministry of culture

Finding 7

Article 144 (1)

There is no time-frame (deadline) for the relevant Minister issue a performance of works for the State construction Inspector to perform activities proscribed for the authorized construction inspector.

Possible abuse of discretionary power from the relevant Minister. Wording “may” or “can”.

Recommendation 7-a: To delete the word “may” in the article 144 (1)

Recommendation 7-b: To further frame discretionary power of relevant the Minister regarding issuing authorizations indicated in article 144 and article 145 and other articles with similar circumstances.

Recommendation 7-c: State construction inspector should have the obligation to inform the Inspection council on the date when he/she submitted the suggestion for issuing authorization and the date when the authorization was issued for the specific case.



Article 144, Article 145

Municipalities can be without
Authorized construction inspectors

No oversight and no
supervision
Risks of corruption

Recommendation 8:

State authorized bodies should have obligation to inform the Inspection council about cases when municipalities does not have an employed Authorized construction inspector in order to avoid possible abuse of discretionary power from mayors. Inspections should be independent of political interference but at the same time inspectors need to be accountable to ministers. With this recommendation the goal is to reduce risks of corruption and to relax inspection from political interferences due to their accountability to relevant Minister.

3.4. OVERSIGHT IN LEGAL FRAMEWORK RELATED TO EMPLOYMENT (PUBLIC ADMINISTRATION, EDUCATION, HEALTH, CULTURE)

3.4.1. Overview and Analysis

The scope of the labor inspectorates lies at the intersection between legislation, technology and political, social and economic reality. She is now widely regarded as a multidimensional activity that evolves in a context which may be political or economic as well as cultural or social or of a nature technical, medical and legal. The labor inspectorate is thus faced with challenges complex so that it is necessary to strike a balance between the requirements of more traditional industrial health and safety concerns and the requirements arising from the changing economy and the changing perception of the role of labor inspection.

It appears essential to adopt approaches more holistic which incorporate improvements to the working environment through methods aimed at ensuring "well-being at work. In the broadest sense. These approaches find their foundations in:

- (i) The requirements of current ILO Conventions, in particular Convention No. 81 relating to labor inspection;
- (ii) The framework directive and its related directives which focus on the system health and safety management;
- (iii) The objectives set in the communication "Adapting to changes in work and society: a new community strategy for health and safety 2002-2006 ", which aims to continuously improve the well-being of job ;



- (iv) The "Resolution on the role of SLIC in the framework of the new strategy Community on health and safety at work 2002-2006 ", CHRIT, Billund, Denmark, November 5-6, 2002;
- (v) The European Social Charter (revised), Strasbourg, 3 May 1996.

The legislative basis for the scope of the labor inspectorate in the EU lies in the framework directive which defines the general application of Community law in health and safety. The directive applies to virtually all sectors. The CHRIT strives above all for the correct and uniform implementation and compliance with the directives community, and these common principles help him to do so. The framework directive does not concern independent nor the risks to the public presented by construction activities. In some Member States however, these two sectors are nevertheless part of the mission principal of the labor inspectorate. Labor inspectors may also be required to perform other functions that do not fall within the scope of the framework directive (this may be, for example, tasks relating to the environment or industrial relations). The framework directive has a sectoral scope which goes beyond the scope ILO Convention No. 81 on labor inspection and its recommendations related. This has, on the other hand, a broader thematic scope.

ILO Convention 81 has a structural concept that refers to authorities "Central" or "competent" responsible for monitoring legal provisions and operational policies and the exercise of planning, monitoring and information gathering. The distinction between a labor inspectorate and a central authority is therefore largely artificial in many cases. In places where this revised declaration of common principles refers to the labor inspectorate (IT), which is therefore considered to fulfill the role of "central authority" within the meaning of ILO and conforming to the terms of federal systems.

Labor Inspections in EU Member States

EU Member States are responsible for the implementation and enforcement of Community legislation on health and safety at work. It is important that they work together in order to develop coherent approaches across the Community. So that the labor inspection function can be carried out effectively in the light of common principles. It is therefore essential that the EU Member States take measures aimed at: (i) Guaranteeing the correct transposition of Community law into national law; (ii) Develop their occupational health and safety strategies in a comprehensive approach to working conditions, specifying what the Member State wishes to achieve and over what period. The strategies should be transparent to the social partners and take into account the Community strategy, as well as the expectations, needs and priorities at national and local level; (iii) maintain or develop institutions and mechanisms responsible for the implementation of EU law, which may, in some cases, include specialized support services, police forces and legislative and legal systems on which the labor inspectorates depend for the effective and efficient exercise of their responsibilities. These institutions should have sufficient resources to carry out their tasks in accordance with national and regional strategies; (iv) establish effective relationships between ministries, organizations and institutions directly or indirectly concerned with occupational health and safety in order to align strategies, share know-how and coordinate actions; (v) establish effective relations with the social partners to make use of their expertise, take account of priorities and guarantee their support; (vi) collect, compile, analyze and make public information on health and safety performance at the level of the nation, the region, the sectors of activity and, if necessary, the company and the workplace ; (vii) encourage employers and workers to take positive action to adopt higher occupational health and safety standards and provide employers and workers with adequate information and advice to assist them to respect the legislation.



Key Principles related to Labor Inspectorates in the EU

The key principles, which should apply in all EU member states, focus on the implementation and enforcement of EU law. They corroborate the point of view of the Council and Commission "that an effective application of Community law is a necessary condition to improve the quality of the working environment". In order to ensure implementation and effective enforcement at the operational level, labor inspections must:

Competences and independence of Labor inspectors

- (i) Prepare annual work plans setting out priority areas of action for the year and providing detailed information on the programs inspection and other necessary for the execution of these plans;
- (ii) Establish systems to monitor the progress made by report to the annual plan and establish the data required for the establishment of the SLIC annual report;
- (iii) Ensure that the functions of inspectors are accessible to both men and women; ensure that inspectors have the necessary suitably qualified, have the competence required to endorse their responsibilities and receive training, instruction and information necessary for the proper performance of their tasks;
- (iv) Guarantee inspectors the possibility of obtaining specialized, technical, scientific, legal and methodological and other to help them carry out their tasks;
- (v) Ensure the independence of inspectors from outside influences undue and impartiality vis-à-vis the companies or organizations they inspect and ensure that they do not undertake other tasks likely to interfere with their primary responsibilities;
- (vi) Ensure that inspectors have offices and transport facilities adequate and are reimbursed for the costs duly incurred for the execution of their tasks;

Powers of inspectors

- (vii) Ensure that inspectors have the necessary powers to carry out well the missions assigned to them, among others, the power
 - enter the workplace without announcing yourself,
 - carry out inspections and investigations at the workplace,
 - to oblige employers and employees to provide them with all information in connection with an inspection or investigation,
 - review health and safety files and reports At work;
 - to apply, or enforce, sanctions when they deem them required,
 - to impose the immediate cessation of activities in the event of serious risk. In some Member States, this risk must also be imminent, in others, the serious risk can be delayed, this is the case of the latent effects on the health. These powers should be exercised with full respect for the confidentiality of the data. personal medical, economic information, complaints from workers and trade secrets.

Guidance for inspectors

- (viii) Establish in writing the approach to be adopted by inspectors during visits to workplaces and indicate the actions to be taken in given situations (cf. paragraph 11 below);

Internal communications

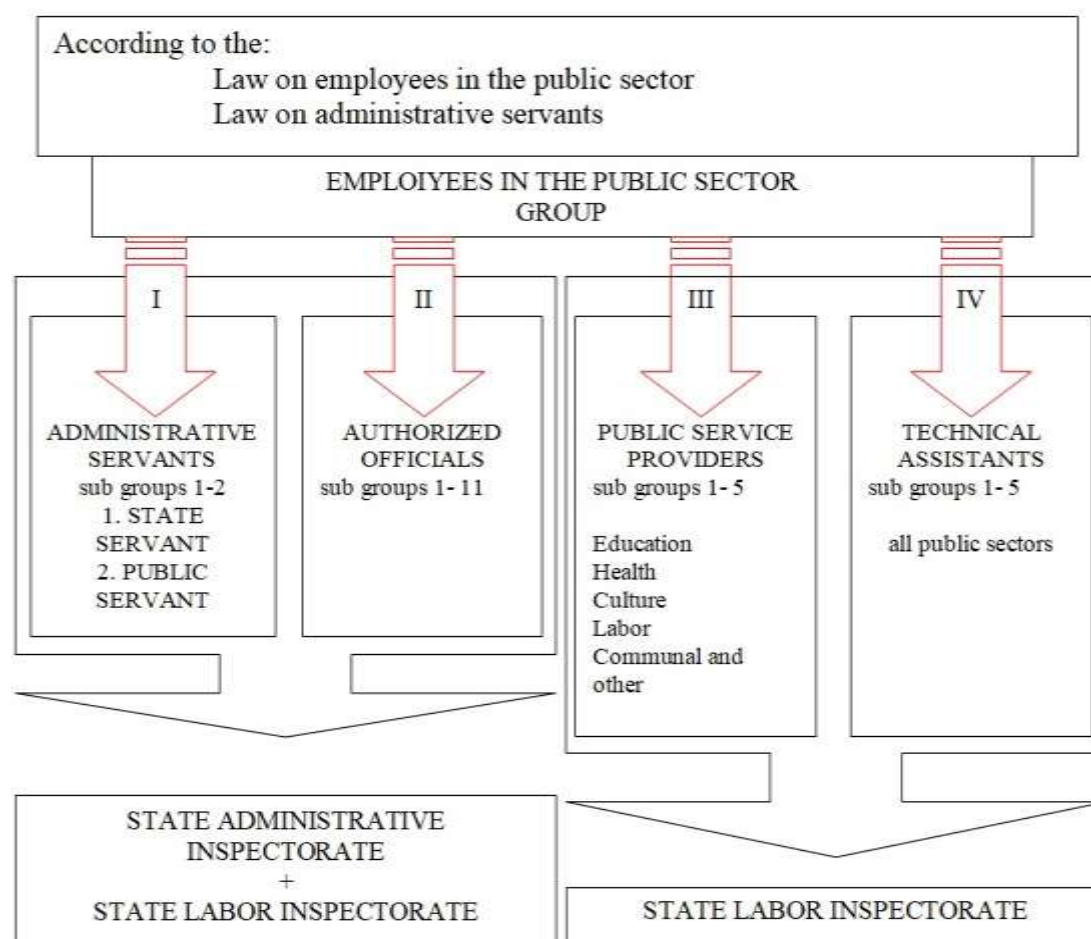
- (ix) Ensure the existence of good communication links in order to attract attention other



inspectors, policy makers and lawmakers on issues of good practices and areas for improvement, particularly through a system appropriate information.

At the international level, the common principles of labor inspection have been defined in texts such as Convention 81 of the International Labor Organization. Two main approaches can be distinguished. In the first, characteristic of Latin countries such as France, Spain and Portugal (but also present, to varying degrees, in countries such as Germany, the Netherlands and the Baltic States), the inspection of the work is "generalist": its responsibilities may relate to social and labor law, various aspects of labor relations, working conditions, as well as occupational health and safety. It is generally managed centrally and is accountable to the central administration, although it often has regional structures (and is organized regionally in federal states like Germany)

Table 14 : Presentation of competences of State administrative inspectorate and State Labor Inspectorate in Republic of North Macedonia



State Administrative Inspectorate is constituted by the Law on administrative inspection ("Official Gazette of the Republic of Macedonia" No. 69/04, 22/07, 115/07, 51/11, 164/13, 41/14, 33/15, 156/15, 193/15, 53/16 and 11/18 and "Official Gazette of the Republic of North Macedonia" No. 103/21). It is performing as self sustainable body in Ministry of Information Society and Administration. Inspectorate performs inspection supervision over the implementation of the provisions of the Law on Public Employees, as well as the regulations

adopted on the basis of this Law, for the employees from group I - jobs of administrative employees, ie persons who have established employment in public institutions, sector for performing activities of administrative nature and group II - jobs of officials with special authorizations/powers, i.e. persons who have established employment in public sector institutions in the field of security, defense and intelligence for the purpose of performing special authorizations/powers.

For the performed inspection, the established factual situation, ascertained and determined irregularities and shortcomings, remarks, statements and other relevant facts and circumstances, the inspector compiles a written record, and with a decision issues a warning or order and determines a deadline within which the subject of inspection is obliged to remove irregularities and deficiencies identified in the minutes.

If an appeal of the act of the state administrative inspectorate is allowed, it can be submitted in accordance with the legal instruction contained in the act.

After the complaints related to the employment issues of the civil servants and the public servants, the Commission of the Agency for Administration is competent in deciding on the complaints and objections of the administrative employees in the second instance.

The State Commission for deciding in administrative procedure and employment procedure in the second instance is competent to decide on issues in the field of labor relations in the second instance (which are not within the competence of the Agency for Administration) and on issues in the field of labor relations for civil servants from the Agency for Administration.

The rights and duties of employment for fixed-term employees are regulated by the general regulations on employment. Therefore, the State Labor Inspectorate is in charge of inspection issues related to their employment.

The dissatisfied administrative officer may file a lawsuit against the final decision before the Administrative court in accordance with the Law on administrative dispute.

For the public sector employees in groups III and IV specific inspectorates are authorities to perform oversight and supervision. The State sanitary and health inspectorate for employees that provide public services in health sector, the State education inspectorate for employees that provide public services in education.

Inspectors in the Sector for labor relations in the State Labor Inspectorate, perform inspections in the field of labor legislation. The sector is also responsible for inspecting employers for the implementation of laws and other regulations in the field of labor legislation, collective agreements and employment contracts.

It is constituted by the Law on Labor Inspection ("Official Gazette of the Republic of Macedonia" No. 35/97, 29/02, 36/11, 164/13, 44/14, 33/15, 147/15 and 21/18 and "Official Gazette of the Republic of North Macedonia" No. 317/20). It is self sustainable body in Ministry of labor and social politics.

An appeal may be lodged against the decision of the Labor inspector within 15 days from the day of receipt of the decision. After the appeal against the decision of the inspector, the State Commission for decision-making in the second instance in the field of inspection supervision and misdemeanor procedure decides.

An administrative dispute cannot be initiated against the final decision of the labor inspector, made at the request of an employee for postponement of the execution of the final decision of the employer, for which a labor dispute is being conducted before a competent court.



The State Labor Inspectorate in Republic of North Macedonia

The State Labor Inspectorate (SLI) is in charge of the effective enforcement of the labor legislation which aims to decrease the number of illegally employed persons, to protect the legal rights of workers, and to ensure safe and healthy working conditions. The Director of the SLI is appointed by the government and reports to both the government and the Minister. There are three sectors within the SLI, one sector for Labor Relations Inspection, one for Occupational Safety and Health (OSH) inspection and one for OSH Legislation. The Sector for Labor Relations inspection deals with the implementation of standards with regards to labor relations, employment and social insurance in all sectors of the economy, including mining, public administration and self-employed. For the purposes of efficient performance their work the territory of the state is divided in 9 sectors:

Region	Cities covered by the region
Region 1	Skopje
Region 2	Kumanovo, Kratovo, Kr. Palanka, Sveti Nikole,
Region 3	Stip, Kocani, Vinica, Delchevo, Berovo, Probistip
Region 4	Kavadarci, Negotino, Veles
Region 5	Gevgelija, Strumica, Radovish, Valandovo
Region 6	Tetovo, Gostivar
Region 7	Ohrid, Resen
Region 8	Struga, Debar, Kicevo
Region 9	Bitola, Prilep, Demir Hisar, Krushevo, Makedonski Brod

The sector for OSH inspection covers the field of occupational safety and health in all public and private sectors, with the sole exception of the mining industry. Within the sector for Labour Relations there are three departments covering:

Region	Cities covered by the region
Region 1	Skopje
Region 2	Kumanovo, Probistip, Stip, Kocani, Veles, Kavadarci, Negotino, Gevgelija, Strumica, Delchevo, Vinica
Region 3	Tetovo, Gostivar, Debar, Kicevo, Struga, Ohrid, Resen, Bitola, Prilep

Each department has a Head of Department. Of the 30 regional offices, only 16 of them have both labor relations and OSH inspectors, in the rest they only have labor relations inspectors. In offices where there is only one labor relations inspector, the inspector performs both labor relations and OSH functions without having received specific OSH training.

The sector for OSH Legislation has only one officer at central level.

Inspectors in regional offices act with considerable autonomy, just reporting to the Heads of Departments. There are also Coordinators in the regional offices that are in charge of communicating with the Heads of Departments.

All inspectors comply with the Law on Inspectoral supervision. Their status is regulated as administrative state servants i.e. group 1 categories B level 1 to 4 and V level 1 to 4. The employment of inspectors cannot be temporary. Their performance is evaluated annually by their immediate superior. An inspector can lose his/her position upon receiving a negative evaluation three times over a period of five years or in two consecutive years. No inspector has received a negative evaluation in the past 5 years.



Labor relations inspectors are all lawyers, with a minimum of 3 years of experience, who have all passed the professional exam for work in the administration. OSH inspectors are graduate engineers in one of five technical fields: mechanics, civil engineering, architecture, electrical engineering, and technology and labor protection. They must also possess a minimum of 3 years of work experience and have to pass the professional exam.

The Economic and social council is relatively new tripartite institution, established in the end of 1996. In the past, the agreement for establishment of ESC was signed between the Government, Confederation of Trade Unions and the Economic Chamber Promoting and encouraging tripartite social dialogue at national and local levels, as well as promotion of bipartite social dialogue at enterprise level and strengthening the capacity of social partners through involvement in all the activities is one of the most important commitments of the Government of the Republic of North Macedonia. In 2005 amendments have been made in the Labor Code for functioning of the social dialogue on a bipartite and tripartite level. The law prescribes rules for establishment of organization of employers and trade unions as well as for collective agreement 'and employers' organizations as well as collective bargaining and labor relations between the two sides. The law provides the basis for the creation of the Economic and Social Council (ESC). In accordance with the Labor Code the work of the Economic and Social council is based on the need of tripartite cooperation among the government , the trade unions and the organization of employers of the Republic of North Macedonia about solving the economic and social issues.

The Economic and social council (ESC) is competent for the following: a) gives opinions, preparation and conclusions on its own initiative or as a request from any of the social partners , the government of the R.M within the authorization determined with the Labor Code and in this agreement ;b) suggestions for ratification and international labor standards in compliance with the convention of ILO 144 for tripartite consultation; c) implementation and constant following of the obligations of the ratification of the convention of ILO 144 for tripartite consultation and for other tripartite bodies as well, d) and establishment of working bodies (boards and commissions). The ESC shares its opinions , suggestions and recommendations for certain laws, principles, national strategies and programs related to the economic and social interest of the employers and for the employees as well , before they got into consideration from the Government of the Republic of Macedonia, whereby the opinions regarding the Labor Code , employment, pension and disablement insurance , occupational health and safety are mandatory.

In May 2021, the State Labor Inspectorate has organized with other partners courses and workshops on preventing and combating trafficking in human beings for the purpose of labor exploitation. Labor inspectors are facing regarding identification and referral of potential victims of human trafficking for the purpose of labor exploitation, including its gender perspective.

The Ministry of Information Society and Administration through administrative inspectors in the State administrative inspectorate supervises the implementation of the legal provisions within the public authorities; the Ministry of Economy has mining inspectors who supervise occupational safety and health in the mines according to the Law on Mining; the Ministry of Environment is entrusted with radiation protection, which is monitored by nuclear safety inspectors, and environmental inspectors; the Ministry of Health has sanitary inspectors who enforce sanitary legislation and protect public health according to the Law on Health Protection. There are also market inspectors.



Laws that cover organization and functional composition

- Law on Labor Inspection ("Official Gazette of the Republic of Macedonia" No. 35/97, 29/02, 36/11, 164/13, 44/14, 33/15, 147/15 and 21/18 and "Official Gazette of the Republic of North Macedonia" No. 317/20)
- Labor Relations Law ("Official Gazette of the Republic of Macedonia" No. 62/05, 106/08, 161/08, 114/09, 130/09, 50/10, 52/10, 124/10, 47/11, 11/12, 39/12, 13/13, 25/13, 170/13, 187/13, 113/14, 20/15, 33/15, 72/15, 129/15, 27/16, 120/18 and "Official Gazette of the Republic of North Macedonia" No. 110/19, 267/20 and 151/21)
- Law on Occupational Safety and Health ("Official Gazette of the Republic of Macedonia" No. 92/07, 136/11, 23/13, 25/13, 137/13, 164/13, 158/14, 15/15, 129/15, 192/15 and 30 / 16 and "Official Gazette of the Republic of North Macedonia" No. 18/20)
- Law on administrative servants ("Official Gazette of the Republic of Macedonia" No. 27/14, 199/14, 48/15, 154/15, 5/16, 142/16 and 11/18 and "Official Gazette of the Republic of North Macedonia" No. 275 / 19, 14/20 and 215/21)
- Law on public sector employees ("Official Gazette of the Republic of Macedonia" no. 27/14, 199/14, 27/16, 35/18 and 198/18 and "Official Gazette of the Republic of North Macedonia" no. 143/19 and 14/20)
- Law on Employment and Work of Foreigners ("Official Gazette of the Republic of Macedonia" No. 217/15 and "Official Gazette of the Republic of North Macedonia" No. 163/21)
- Law on Volunteers ("Official Gazette of the Republic of Macedonia" No. 85/07, 161/08, 147/15 and "Official Gazette of the Republic of North Macedonia" No. 124/19 and 103/21)
- Law on Trade "Official Gazette of the Republic of Macedonia" No. 16/04, 128/06, 63/07, 88/08, 159/08, 20/09, 99/09, 105/09, 115/10, 158/10, 36/11, 53/11, 148/13, 164/13, 97/15, 129/15, 53/16 and 120/18 and "Official Gazette of the Republic of North Macedonia" No. 77/21 and 215/21)
- Law on Protection Against Smoking ("Official Gazette of the Republic of Macedonia" No. 36/95, 70/03, 29/04, 37/05, 103/08, 140/08, 35/10, 100/11, 157/13 and 51/18)
- Law on prohibition and prevention of performance of unregistered activity ("Official Gazette of the Republic of Macedonia" no. 199/14 and 147/15 and "Official Gazette of the Republic of North Macedonia" no. 18/20)

Protection of workers' rights and sanctioning of employers in the Republic of North Macedonia is in the competence of the Labor Inspectorate. The labor inspector, by decision will stop the work of the employer if he meets a person with whom a working relationship has not been established in accordance with the law and the collective agreement, if the employer has not submitted an application for compulsory social security, respectively has not accrued and has not paid contributions from the salary, if he has not paid a salary, respectively a lower salary, for three months, if he does not respect it, respectively breaks the working hours and the order of working hours and if he does not keep electronic record of the hours full-time work even for overtime work. The work ban cannot be replaced with a fine if the labor inspector finds the same shortcoming for the second time. The labor inspector will submit a request for initiating a misdemeanor procedure, if he finds that the employer, respectively the person responsible for violating the law or other provisions, collective agreements and employment agreement which determine the employment relationship, has committed a misdemeanor.

The annual plan of the Sector for inspection in the field of social protection and protection for 2021 is realized through monthly plans for each inspector individually. When determining the content of the Annual Work Plan of the Sector for 2021, it starts from the



competencies and organization of the Sector determined by law and the strategic plan of the Ministry of Labor and Social Policy, taking into account the priorities of the Ministry of Labor and Social Policy and Government of the Republic of North Macedonia

3.4.2. Findings, Identification and recommendation

Table 15 : Findings, Identification of Risks and Recommendations

	Findings	Risk	Recommendation
Finding 1	The division among the public and private sector employees is clearly stated and regulated with Laws for Administrative servants and Law on employees in the Public sector. However there are provisions in both of those laws referring to the Law on labor relations, for all of the issues that are not regulated with the lex specialis. Relations among employers and employees in the public sector are further regulated with Collective agreements for employees in the public sector, and specific sector Collective agreements. It is usual to implement certain solution from the general labor legislation in the Collective agreements. However these agreements are not so frequently updated with dynamic changes in the field of public sector.	Unclear provisions	Recommendation 1 In the legislation related to public sector, administrative servants and public sector employees, there should be clear provisions witch articles from the “general” labor legislation i.e. the Law on labor relations (Labor Law) relate to the employees in this sector.
Finding 2	The director of the State labor directorate should have appropriately specified education, and competence to become licensed labor inspector in one of the fields that Inspectorate inspectors must comply. Otherwise the director may easily be in illiterate to operate with work of directorate employees.	Unprofessional director of the State labor directorate	Recommendation 2 The director of the State labor Inspectorate should have appropriate educational degree in law or some of the technical fields required for OSH inspectors and passed exam for inspector. If not the director should pass an inspector exam in the first two years of his mandate.



Finding 3

Article 24 in the Law on labor inspection refers to Articles 16, 17, 18, 19 and 26 paragraph 3 from the previous law. It is not clear why legal solutions in this provisions are not established as provisions in the current law.

Provisions in Articles 16, 17, 18, 19 and 26 paragraph 3 are hard to find and contain vague discretionary rights for the inspectors, Provision in Article 26 paragraph 3 in the previous law is in collision with the article 19 in the new law regarding the time frame for submitting an appeal.

Recommendation 3

The Article 24 should be reconsidered in the part “except for the provisions of Articles 16, 17, 18, 19 and 26 paragraph 3” Legal solutions in this provisions should be established as provisions in the current law, with necessary attention to avoid collisions with current legislation.



4. GENERAL RECOMMENDATIONS

Recommendation 1: Any occurrence of the word may/can in the viewed legislation to be further scrutinized for discretionary rights, hence to avoid their abuse. Clear and detailed guidance on enforcement aimed at 'framing' discretion, while promoting compliance and ensuring that the measure is effective would be a valuable for implementation of legislation.

Recommendation 2: Any occurrence of the word competent court or competent body to be further scrutinized to avoid legal uncertainty.

Recommendation 3: The laws in which misdemeanor sanctions are prescribed shall be harmonized with the provisions of the Law of Misdemeanors. If misdemeanor sanction is proscribed as in European legislation the Directive / Resolution shall be stated.

Recommendation 4: The existence of the State Commission for deciding in the second instance in the field of inspection supervision and misdemeanor procedure should be determined for its operations. The Law on Inspectoral supervision should be amended appropriately.

Recommendation 5 : The control of work of inspectors should be strengthened

Recommendation 6 : The communication and information on work of inspectors towards Inspection council should be more efficient in term of regularity and content

Recommendation 7 : The Inspection council should have capacity to monitor the work of inspectors through a Monitoring Information System (MIS) based on daily performance of inspectors work.

Recommendation 8 : The Monitoring Information (MIS) should include a complaints' management system.

Recommendation 9 : The work of inspectors should be more transparent and public available.

Recommendation 10 : To establish a single information system for inspections - E-inspector

Recommendation 11 : The system of Accredited laboratories and other bodies involved in sampling used for inspection supervision should be strengthened in financial and technical terms.

Recommendation 12 : Risks itself, the risk management strategy and the risk-based enforcement approach are communicated to stakeholders clearly and actively.

Recommendation 13 : A comprehensive structured system of inspection agencies and their authorization .should be easily available for the public, with information setting out clearly who controls which sectors and issues. This is essential for the public to demand accountability by contesting the work of the state or municipal bodies and other subjects by inspector supervision.

Recommendation 14 : Linked to recommendation 13, Possibilities for trusted, semi-anonymous complaints in favor of public interest against abuse need to be present. Citizens,



consumers, workers and other stakeholders should have well-publicized, simple to use possibilities to file complaints against regulated subjects and know how they are handled. To consider a method used to measure the level of satisfaction by including the measurement of trust from stakeholders in general, as well as the satisfaction and trust among inspected subjects.

Recommendation 15 : Data on appeals and complaints should be used as an element to assess and improve inspection's practices in terms of professionalism, compliance promotion, amongst others.

Recommendation 16 : Inspections should not be influenced by political priorities as scarce resources should be focused on reducing risk and not politically motivated to win votes which could also lead to accusations of corruption. A mechanism to reduce risk on pressure on Inspectors should be strong and confidential.

Recommendation 17 : All inspection authorities should be supported by cross-sectoral strategies in place and implement them to support ethical decisions, prevent conflicts of interest and make professional judgements about disclosure and when it is appropriate.



5. CONCLUSION

This report concludes Steps 1 and 2 mentioned in the Methodological approach. Identified recommendations and their implementation are developed in the Step 3 presented in the Report on draft guidelines on making discretionary powers subject to internal and external audits and controls (in line with Activity 2.3.). In this sense this report and the report in relation to Activity 2.3. are linked.



ANNEXES

ANNEX 1 - SCREENING – MAPPING SPATIAL AND URBAN PLANNING

Law on Urban planning (Official gazette of the Republic of North Macedonia,, n° 32 / 2020)

ARTICLE	CONTENT	OTHER LINKED LAW	COMMENTS	RISK IN THE LAW	RISK IN IMPLEMENTATION
Article 1	This law regulates the systemic and hierarchical order of the urban planning in the system of spatial and urban planning, the goals and principles of the urban planning and the arrangement of the space, the types and the content of the urban plans, the conditions for performing the works from the field of urban planning, the procedures for preparation, adoption and implementation of urban plans, supervision over the implementation of the provisions of this law, as well as other matters in the field of urban planning.	Law in General Administrative Procedure is considered regarding linked law providing rights, obligations and procedures for administration to perform duties and procedures for other involved parties including citizens. Law on establishment of a state commission for decision-making in administrative procedure and employment procedure in second level;	General Introduction0		
Article 5	In the space covered by the urban plans, the public interest is the arrangement and humanization of space, protection and promotion of the animal environment and nature, as well as the preservation of the natural and cultural values of the space For the public interest from paragraph (1) of this article takes care in all phases of urban planning, ie in the procedures of preparation, adoption, implementation and monitoring of the implementation of urban plans. (3) Urban planning mandatory protects the public interest which is a priority, while the private interest is provided in accordance with the law. (4) The urban plans shall determine the type, purpose, area, location and dimensions of the space, land and buildings that are of public		The article provides an explanation of priority of “public Interest” in relation to Urban planning and gives also obligation in any case to provide priority of public interest in comparison with private interest. The private interest is provided in accordance with the law. This gives space for interpretation	This gives space for interpretation	

	interest.				
Article 6	The urban plans referred to in Article 10 paragraph (1) items 2, 3, 4 and 5 of this Law are implemented with individual acts such as the urban project and the construction acts in accordance with the Law on Construction, the harmonization of which with the urban plans is served by the excerpt from urban plan and the certificate of urban compliance.	Article 6 refer to Law on Construction			
Article 7	(1) For harmonization of the urban plans from article 10 paragraph (1) items 1, 3, 4 and 5 of this law, with the plans from higher level of planning, the body of p. 50 - No. 32 10 February 2020 the state administration responsible for performing the activities in the field of spatial planning, issues conditions for spatial planning	Article 7 refer to Local Self Government			
Article 9	9. Objectives and principles of urban planning				
Article 10	(1) Depending on the scope of urban planning, as well as whether the subject of planning is of state or local importance, the following urban plans are adopted: 1. General urban plan; 2. Detailed urban plan; 3. Urban plan for the village; 4. Urban plan for out-of-town settlement and 5. Urban plan for areas and buildings of state importance. (2) The urban plans referred to in paragraph (1) items 1, 2, 3 and 4 of this Article are plans of local importance, and the urban plan referred to in paragraph (1) item 5 of this Article is a plan of state importance.	Article 10 gives the hierarchy of Urban plans in which some refer to Local Self Government			
Article 12	(1) General urban plan for a city whose planning scope covers an area of up to 400 hectares, in addition to the contents of the general planning referred to Article 11 paragraphs (2), (3) and (5) of this Law, may be developed for the entire planning scope. In form and content and as a detailed urban plan from Article 13 of this Law, which will be an integral part of the general urban plan. (2) General urban plan for a city whose planning scope has an area greater than 400 hectares, in addition to the contents of the general planning referred to in Article 11 paragraphs (2), (3) and (5) of this Law, may for part of the planning scope in		The article contains the word "may be" offering choices in par. 1 and 2. Does not contain reasonable guidelines how the Mayor shall select one choice.	Not guided Discretionary power	May affect the budget of the Local Self Government Authorities

	size less than 400 hectares which corresponds to the planning scope of a detailed urban plan and is an urban unit to be developed in form and content and as a detailed urban plan from Article 13 of this Law, which will be an integral part of the general urban plan.				
Article 14	4. Urban plan for the village (4) The adopter of the plan with a planning program determines whether the urban plan for the village will be prepared as a plan with general and detailed regulation from paragraph (2) item 1 of this article, plan with general regulation and general building conditions from paragraph (2) item 2 of this article or as a plan with general conditions for construction from paragraph (2) item 3 of this article. (5) The manner of determining the appropriate type of urban plan for the village is prescribed in the regulation referred to in Article 24 of this Law.			(5) The manner of determining the appropriate type of urban plan for the village is prescribed in the regulation referred to in Article 24 of this Law.	
Article 19	(3) The closer content, form and manner of graphic processing of urban plans referred to in Article 10 of this Law shall be prescribed in the regulation referred to in Article 24 of this Law.		This article gives the structural content of Urban plans		
Article 20	Competent bodies for adoption of urban plans Article 20 (1) The Council of the City of Skopje shall adopt a general urban plan of the City of Skopje. (2) The council of the municipality in the city of Skopje adopts: 1. detailed urban plan; 2. urban plan for the village and 3. urban plan outside the settlement. (3) The municipal council based in the city shall adopt: 1. general urban plan; 2. detailed urban plan; 3. urban plan for the village and 4. urban plan outside the settlement. (4) The municipal council based in the village shall adopt: 1. urban plan for the village and 2. urban plan outside the settlement. (5) The Government of the Republic of North Macedonia shall adopt an urban plan for areas and buildings of state importance in accordance with a procedure determined in Article 30 of this Law.	Due to the list of responsible entities/authorities for adoption of Urban plans, some of these are linked to other Laws (eg. Law on Local self government A22;26;42; Law of the city of Skopje A10;15)	This article gives the list of responsible entities/authorities for adoption of Urban plans		
Article 22	1. Planning period of urban plans Article 22 (1) The spatial planning is performed for a certain planning period, which serves for calculating the		89(4) misdemeanor fees if> does not comply with the deadlines prescribed in relation to the planning period in Article		89(4) not clear provision Needs authentic interpretation

	<p>future needs for spatial development and for predicting the program parameters of the spatial development in the procedure for preparation and implementation of the plans. The planning period is a time for which a projection of all conditions and development tendencies is made based on the data collected in the base year of starting with the preparation of an urban plan and a time period for which the urban plan is expected to be realized.</p> <p>(2) The planning period is ten years for:</p> <ol style="list-style-type: none"> 1. general urban plan, 2. urban plan for the village and 3. urban plan for areas and buildings of state importance. <p>(3) The planning period is five years for:</p> <ol style="list-style-type: none"> 1. detailed urban plan and 2. urban plan for out-of-town settlement. 		22 of this Law;		
Article 22	<p>(4) During the prescribed planning period, the plan adopter once a year, during the preparation of the annual program for preparation of urban plans referred to in Article 40 of this Law, shall analyze the manner of implementation of the plans in order to determine the possible need for their modification. and addition</p>		66(4) The report on the situation in the area shall be prepared by the Commission for Urbanism in cooperation with all legal entities that meet the conditions for performing professional activities in the field of urban planning, and shall be adopted by the Municipal Council, the municipality in the City of Skopje and the City of Skopje.		
Article 22	<p>(6) Deadline for preparation of the analysis referred to in paragraph (5) of this Article, on the basis of which it should be decided to adopt a new plan with a new planning period is 18 months for the cases referred to in paragraph (8) line 1 of this Article and 36 months for the cases from paragraph (8) lines 2 and 3 of this article, before the end of the planning period.</p> <p>(8) The procedure for preparation and adoption of an urban plan, as a rule, should end with the adoption of the plan:</p> <ul style="list-style-type: none"> - no later than 18 months from the beginning of the procedure for preparation and adoption of an urban plan with a planning period of five years; 			No responsibility if circumstances in 22(9) are met.	22(9) Extension of the adoption period of 12 additional months are risk for the budget

	<p>- no later than 36 months from the beginning of the procedure for preparation and adoption of an urban plan with a planning period of ten years and</p> <p>- no later than 48 months from the beginning of the procedure for preparation and adoption of a general urban plan for the city of Skopje.</p> <p>(9) If the procedure for preparation and adoption of an urban plan lasts longer than the deadline specified in paragraph (8) of this Article, and the plan has not been adopted, an analysis shall be performed by the adopter to check whether changes have occurred in the space, that is, whether the data from the documentation basis of the plan are outdated and if the analysis determines that the documentation basis of the plan is not outdated, the process of adopting the plan continues until the adoption of the plan, but for a maximum of another 12 months.</p>				
Article 23	<p>(6) The decision maker, the decision for suspension adopts it on the basis of an expert report for suspension of the application of the urban plan, its parts or planning provisions, prepared by the commission for urbanism referred to in Article 38 of this Law, and upon previously obtained opinion from the Minister managing the body of the state administration responsible for performing the activities in the field of spatial planning, which is issued within 15 working days after receiving the expert report and request for an opinion.</p>		<p>The plans may be abolished in whole or in part by the LSG Council or may be suspended in whole or in part.</p> <p>89(1)5; (2)5</p>	<p>Provided responsibility for damages. No personal or institutional culpability.</p>	<p>May affect the budget of the Local Self Government authorities; or in case 5. the budget of the of the state.</p> <p>Example in practice for the part of the DUP of Skopje.</p> <p>Shadowy practices: private interest is above public interest</p>
Article 24	<p>With the Rulebook for urban planning are prescribe the standards and norms for urban planning and define the principles, principles and methods for rational planning of sustainable settlements and buildings for arrangement and use of space, methods and techniques of urban planning, legal effect of planning provisions, system of purpose classes, as well as any protective or generative standards that ensure compliance the goals and principles of urban planning regulated by this law</p>	<p>Reference to the Rulebook for Urban planning</p> <p>Constitution of RNM Article 112</p> <p>(2) The Constitutional Court shall repeal or annul another regulation or general act, collective agreement, statute or program of a political party or association if it finds that they are not in accordance with</p>	<p>24(2)</p> <p>3 Standards and normative;</p> <p>5 The manner of determining the appropriate type of urban plan for villages from article 14 of this law;</p> <p>8. the manner and the intended, dispositional, morphological and dimensional conditions and rules for construction plots referred to in Article 63 of this Law;</p>	<p>The rulebook may be changed when ever minister finds appropriate, at his will.</p>	<p>VERY important legal act.</p> <p>Proscribed by the authorized Minister after done expert discussion. Expert discussion is vague definition. Reverse influence by Discretionary Rights of the By law (A24) authorized Minister Minister may proscribe</p>

		the Constitution or the law.	9. other professional norms for application in preparation, adoption and implementation of urban plans. (3) During preparation, adoption and implementation of urban plans and urban projects, the rulebook on urban planning is mandatory in use .		rules all by his point of view that may without any other supervision influence public and individual rights by frequent change of the rules, or manner how choices are made. If by nothing else the risk is identified by rulling in the Rulebook: <u>4.1. Planning provisions with legal effect Article 63</u> (1) The urban plan is a general act for planning, construction, maintenance and manner of use of space with legal effect of regulation.
Article 26	Procedure for makeing and adoption of General urban plan		Mandatory expert revision under article 48		
Article 27	Procedure for makeing and adoption of Detail urban plan		Mandatory expert revision under article 48		
Article 28	Procedure for makeing and adoption of Detail urban plan				
Article 29			Procedure for adoption of an urban plan for a settlement Expert commission		
36(3)			Technical error	What if commission find that there is no technical error	Decision that my be contested???
Article 38 - 5			Municipality mayors form Commission for urbanism, members qualifications are	Discretionary Right Ad hoc No time frame for	Selecting members that comply with the mayors ?

			provided in the law Mayor of the municipality, mayor of the municipality in City of Skopje, same (that is) mayor of the municipality of City of Skopje forms a commission for urbanism of the municipality, as a body that is obligated to perform expert works in the procedures for production and pass on of urban plans.	constituting; No procedure for selection of commission members	
Article 38(11)		Minister for T and C	Applicable for UP 5	Ad hoc	Selecting members that comply with the minister ?
Article 38(13)			Generally and obscurely proscribe Financial compensation for members in the commission	Discretionary Right	Risk of Corruption; Risk for budget of the relevant establisher
Article 39(4)			Initiative Non accepting Decision of the Commission for urbanism	Brake points in time line for UP	Decision that my be contested???
Article 44(5)			Vague formulation Planning programs for Urban Planning		
Article 44(7)			Decision of the mayor		
Article 45	The selection for developer of urban plans and urban projects, ie the executor of the works from the urban planning, are performed in three ways: 1. The election is regulated by the provisions of this law, 2. The election is made on the basis of a public call in accordance with the provisions of this law, and 3. The selection is made by the interested legal and natural persons who initiated it and financed the elaboration of the plan.		Selection procedure should be done in accordance with procurement for services (javne nabavke)	Risks	
Article 46			Participative body Important participative body; provides transparent public participating, oversight on	Discretionary Right No time frame for majors to initiate constitution of this body	

			content of urban plans (and general activities of the municipality) Before expert audit (article 48) Vague: Members apply on Public announcement on public place 30 days. Citizens membership on voluntary basis On mayor initiative ... or participants (other stakeholders) Relevant for 44(6)		
47(16)(17)(18)			Minister decides for way, content and form for concurs	Discretionary power (17)(18)	Risk on budget, corruption, ???
Article 48	Expert audit for urban plans of Article 10, paragraph (1), items 1, 2, 3 and 4 shall be prepared by a legal entity that meets the conditions for performing the work for preparation of an expert audit in accordance with this law, and for urban plans for areas and buildings of state importance commission formed by the Minister in charge of performing the tasks in the field of spatial planning	Law on public procurement	expert audit Audit on finalized urban plan? Obligatory expert audit on urban plans	Discretionary Right The expert audit is not part of the draft or proposal plan, only the report and notes, but no conclusion	Bargaining among the commission and the plan maker
Article 49	(1) In the procedure for elaboration of the urban plans from Article 10 paragraph (1) items 1 and 5 of this law, an expert discussion shall be obligatorily conducted, with which the proposed planning decisions shall be presented and inspected by the professional public, as well as public presentation with which the proposed planning solutions are made available to the general public.		Strucna Rasprava And what about Public debate ?		
Article 50 – (7)	7) For the conducted public presentation and public survey, a report is prepared with an explanation for the accepted and non-accepted remarks for the urban plan, by an expert commission formed by the bearer of the plan.		Mayor forms expert commission	Discretionary Rights No time frame for constituting; No procedure for selection of commission members	
Article 50 – (5)	5) The public presentation is an expert presentation of the plan which is organized within the public survey and lasts one working day. For large and particularly important activities for which		Time-frame 1 day And if another presentation then there is Discretionary right to the Authorities responsible	Risk for transparency Risk for public interest	

	there is increased public interest, which have a long duration of the public survey, the public presentation can be repeated, which is decided by the body responsible for the procedure by the planner. The duration of the public survey is determined by the developer of the plan depending on the size and complexity of the scope, the number of natural and legal persons using the space, but at least as specified as the deadline for the public survey in Articles 27, 28 and 29 of this law		for procedure of the Urban plan (Mayor)		
Article 50 – 9	(9) The deadline within which the expert commission referred to in paragraph (7) of this Article must prepare the report for public survey shall be determined in accordance with the number and complexity of the received remarks and may not be an experiment of five days and longer than 60 days. The accepted notes must be incorporated in the proposed plan, and the report is an integral part of the proposed plan. For the procedures for adoption of detailed urban plans for the municipalities in the city of Skopje, the adopter shall submit the proposed plan and the report from paragraph (7) of this Article to the city of Skopje, which may within five working days give an opinion on compliance with the general urban plan of the changes occurred with the accepted notes from the public survey.		Public Survey - paragraph 9 - legal and physical persons covered by the plan / comments Each of the participants paragraph - 9 - consistency of the general urban plan and the notes of the public survey - professional public	Risk for Public interest	
Article 63(5);(6)	(5) The elaboration of the urban project with parcellation plan from paragraph (1) of this article, starts at the request of the owner of the construction land to the commission for urbanism from article 38 of this law, which with the request encloses evidences for the ownership of the construction land and project program with a sketch of the draft parcel plan and the new disposition of the construction areas in the project scope, and in the case of paragraph (2) of this article, a geodetic report for numerical data for the plot is submitted as evidence of the unplanned error in the formation of the construction plot. (6) If the commission for urbanism from Article 38 of this law determines that the request encourages the implementation of the plan in a		24(2)8 The matter is detailed in the Rullebook; Decision If negative opinion, not clear if applicant may appeal If positive opinion, not clear if other parties may protest the decision	Oversight / Protest	Discretionary power Decision on opinion of the commission for urbanism, whose members are selected by DR of the mayor

	way that does not negatively affect the other urban parameters determined by the plan, with a positive opinion approves the elaboration of the urban project with parceling plan.				
Article 64 – 3	3) Legal and physical persons who meet the conditions prescribed in accordance with the Law on Construction, have the obligation to request from the body responsible for implementation of the plan and to conduct the procedure for issuing a construction deed to be issued a certificate of urban consent of the designed building.				
Article 66(6)	(6) The manner of preparation, the closer content of the report, the obligatory spatial parameters and methods for assessing the conditions and other matters of importance for monitoring the conditions in the area of urban planning shall be prescribed by the Minister managing the body of the state administration responsible for performing works in the field of spatial planning.		Discretionary power of the Minister		
Article 67	1. Authorization for the preparation of urban plans (6) The professional exam is taken according to the program from paragraph (8) of this article, before a commission composed of five members formed by the minister who manages the body of the state administration responsible for performing the activities in the field of spatial planning, from the order of : - professors at the Institute of Urbanism at a public higher education scientific and professional institution in the field of architecture and urbanism, - urban architects with more than 15 years of professional experience from the ranks of members of the professional department of urban architects at the Chamber and - urban architects employed in the professional services of the body of the state administration responsible for performing the works in the field of spatial planning, who have more than 15 years of professional work experience in the profession		Candidate must have passed professional exam. Authorization is issued by the Chamber of Certified Architects and Certified Engineers Member of the commission may not be professor from private higher education institution?		Discretionary power The members are selected by the Minister of Ministry for transportation and commutations /
Article 68 – 10	2. License for preparation of urban plans		Discretionary Power Minister proscribes needed documentation that is already listed in the law in 68(2)		

Article 71	<p>The authorized urban architect for preparation of urban plans can perform the professional work of urban planning in:</p> <ol style="list-style-type: none"> 1. legal entity registered for performing the respective activity, which has a license in accordance with this Law; 2. Public institution for urbanism and 3. Spatial planning agency. 	Law on Central Registry National Classification (NKD) - harmonized with European law Licence by the Minister	<p>Spatial Planning Agency An authorized architect may work for a legal entity that has a license to perform activities and has a License.</p> <p>IF the authorized architect may only perform in the 3 listed entities than how members of the Commission for urbanism perform their service in the commission?</p>		
Article 72			Public Institution for Urbanism Municipalities,		
Article 73			Agency for Spatial planning State		
Article 80		Law on employment of civil servants Law on employment	About employees in the Agency for Spatial Planning		
Article 80-2			Chamber of authorized engineers and architects		
Article 81	<p>8. Tariff for value of works from urban planning (1) The legal entities that hold a license in accordance with this Law shall charge a fee in accordance with a tariff established by the Minister managing the body of the state administration responsible for performing the activities in the field of spatial planning, at the proposal of the Chamber of Authorized Architects and Engineers. after previously obtained consent from the Government of the Republic of North Macedonia, for preparation of:</p> <ol style="list-style-type: none"> 1. urban plans referred to in Article 10 paragraph (1) item 1, 2, 3, 4 and 5 of this Law; 2. urban project referred to in Article 58 paragraph (2) item 1, 2, 3, 4 and 5, paragraph (6) of this Law; 3. urban project with a parcel plan from Article 63 of this Law; 		<p>Tariffs are published in the state Official Gazette. Expenses are covered transparently.</p>	<p>Tariffs existence within the provisions in the Law itself mean that the services are not subject of Law on public procurements, but are contracts with discretionally selected parties with proscribed qualifications that provide services.</p>	

	4. planning program; 5. expert audit 6. professional studies and elaborations necessary for the preparation of the urban works from item 1, 2, 3, and 4 of this article, (2) The Tariff Book shall be published in the "Official Gazette of the Republic of North Macedonia", on the website of the Ministry of Transport and Communications and on the website of the Chamber of Authorized Architects and Authorized Engineers.				
SECTION 7	SUPERVISION				
Article 82	Section 7 – Supervision Supervision over the implementation of the provisions of this Law and the regulations adopted on the basis thereof shall be performed by the body of the state administration responsible for performing the activities in the field of spatial planning.	Law on inspection Law on establishment of a state commission for decision-making in the second level in the field of inspection supervision and misdemeanor procedure / independent Law on the state inspectorate for local self-government / Law on local self government Law on establishment of a state commission for decision-making in administrative procedure and employment procedure in second level / independent	Ministry of Transport and Communications / State inspectorate for building and urbanism		
Article 83	1. Inspection, State Inspectorate for Construction and Urbanism and State Urban Inspector State urbanistic insector Macedonian citizen, architect, VIJA with 300EKTS, 5 years of experience in architecture and urbanism. Has legitimation proscribed by Minister for landscaping (MTC)		State Inspectorate for Construction and Urbanism is within: Ministry of Transport and Communications (MTC)	Fines if functioning of the inspection, ie the cooperation with the urban inspector is not ensured in purpose of activities performed/proscribed in Articles 83, 85, 86 and 87 of this Law (Article 88)	
Article 84		Law on Prohibition and Prevention of Unregistered Activity	Inspector checks if target documents (all urban planning documents) and target institutions, state bodies, legal and physical entities comply with proscribed procedures, meet the conditions to comply and therefore posses proscribed		

			licenses for performed works and duties. Attention is on compliance with articles 9 and 42, phases proscribed and related to article 22 are met, time frames for UP in article 23, Procedures proscribed in articles 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 48, 49, 50, 51, 52 ; response delivery of documents and time frames proscribed in article 47; time frames from article 53 are met, conversion in article 54 are within proscribed time frames, procedures for plans implementation from articles 57, 58, 59, 60, 61, 62, 63 are met; procedure for issuing the certificate of urban compliance in article 64 is followed, licensed and authorized performers of expert activities in producing of urban plans and urban projects from articles 67, 68, 69 70, 71 и 72 ; are proscribed time frames followed, trifs for value of works in article 81, and related provisions in linked law.		
Article 85	(1) Inspection of the preparation, adoption and implementation of urban plans is performed ex officio, based on the inspection and schedule of the inspectorate or on the basis of a proposal for inspection submitted by a state body, municipality, municipality in the city of Skopje and the city Skopje, as well as by any interested legal and natural person. (5) Failure to act upon the decision of the inspector from paragraph (3) of this Article is considered a serious violation of the official duty of the responsible person of the entity from paragraph (2) of this Article, and the inspector is obliged the legal entity and the authorized person, to oblige them to execute the decision by imposing a fine in the amount of EUR 300 in MKD equivalent for the authorized person from the responsible person in the legal entity and EUR 1,000 in MKD equivalent for the legal entity.(6) If the decision referred to in paragraph (3) becomes final, and the inspection established that the provisions of this Law have been violated by an act for which a criminal or misdemeanor qualification has been established by law, the inspector shall be obliged to file criminal or misdemeanor charges with the competent authorities.		(3) Inspector makes Minutes and delivers Decision for performed inspection duties, with findings and eventually ordered actions for compliance with in certain time frame. (4) Decision is subjected to second level appeal.	Not clear addressing for appeal related to (4).	This provision is specific "case to case". If there is an administrative error by the inspector see related law in article 1; If there is an error regarding the material law or merrits related law in article 85; After the second level procedures opposing may continue with lawsuit in Administrative court.
Article 86	Inspection of the implementation of the urban		Articles 57, 58, 59, 60, 61, 62	Not clear provision who is	

	<p>plans</p> <p>(1) If during the inspection of the procedures for implementation of the urban plans from articles 57, 58, 59, 60, 61, 62 and 63 of this law, as well as the procedure for issuing a certificate for urban compliance from article 64 of this law, the inspector with a report on the ascertained situation determines a violation of the provisions of this Law in the subject of the inspection, is obliged to make a decision annulling the act with content contrary to the provisions of this Law or which is conducted by a procedure contrary to this Law and the regulations adopted on based on it.</p> <p>(4) If the basis for annulment of the acts that are subject to inspection were an urban project, ie the conceptual design that is an integral part of the urban project, which have been determined to have been made contrary to this Law and the regulations adopted on its basis, the inspector is obliged to submit a proposal to the state administration body responsible for performing the activities in the field of spatial planning for revoking the license of the legal entity that prepared the urban project, ie the conceptual design, as well as the license of the legal entity that prepared the expert report. revision of the urban project, and to submit to the Chamber of Authorized Architects and Authorized Engineers a proposal for revoking the authorization of the natural person who is a signatory of the urban project, ie the conceptual design or the expert revision of the urban design.</p>		<p>and 63 refer to Urban project (detail elaboration of Plans type 2, 3, 4 and 5 as well to procedure for issuing a certificate for urban compliance from article 64</p> <p>Important: Annulling the act with content contrary to the provisions of this Law If specific error obligation for inspector to propose revoking of licenses for legal entity and/or authorization for natural person.</p> <p>Decision subject to appeal.</p>	second level authority	
Член 87	<p>Supervision over the legality of the work of the municipal bodies, the municipalities in the City of Skopje and the City of Skopje</p> <p>(1) The supervision over the legality of the work of the bodies of the municipalities, the municipalities in the City of Skopje and the bodies of the City of Skopje in the process of preparation, adoption and implementation of the urban plans shall be performed by the body of the state administration responsible for performing the works in the field of spatial planning;</p> <p>(2) The supervision over the implementation of the</p>		Ministry for transportation and commutations / communications		

	<p>provisions of this Law and the regulations adopted on the basis thereof shall include: 1. the legality of the content of the urban plans; 2. fulfillment of the standards and norms in the field of urban planning prescribed by this Law; 3. the legality of the procedures in the preparation, adoption and implementation of the urban plans and 4. legality of the work of the bodies of the municipalities, the municipalities in the city of Skopje and the city of Skopje.(3) The body of the state administration responsible for performing the activities in the field of spatial planning shall supervise the activities referred to in paragraph (2) of this Article by insight into the case through the information system e-urbanism and through the consent of the draft plan referred to in Article 51 of this law.</p> <p>(4) When performing the supervision, the body of the state administration responsible for performing the activities in the field of spatial planning shall also perform the following activities:1. gives recommendations and indications for consistent implementation of the competencies of the municipalities, the municipalities in the City of Skopje and the City of Skopje for the matters that are subject to the supervision; 2. points out to the bodies of the municipalities, the municipalities in the City of Skopje and the bodies of the City of Skopje to exceed their competencies determined by this Law and other regulation adopted on the basis of this Law and proposes appropriate measures for overcoming that situation; 3. points out certain material and procedural shortcomings in the work of the municipalities, the municipalities in the City of Skopje and the bodies of the City of Skopje that could prevent the performance of the activities determined by this Law, which are of public interest; 4. submits initiatives and proposals to the bodies of the municipalities, the municipalities in the city of Skopje, to the bodies of the city of Skopje, if it ascertains non-implementation of this law and 5. submits a request to the competent inspector referred to in Article 83 of this Law for initiating misdemeanor proceedings against the bodies and entities with public authorizations, legal and</p>				
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	natural persons participating in the process of preparation, adoption and implementation of urban plans that worked contrary to the provisions of this law.				
Section 8	VIII. Misdemeanor provisions				
Article 88	<p>VIII. Misdemeanor provisions</p> <p>Misdemeanors done by legal and natural persons that prepare and revise urban plans; Article 88;</p> <p>(1) prepare an urban plan that has content that is not in accordance with the Articles 11, 12, 13, 14, 15, 16, 17, 18</p> <p>(2) make/prepare urban plan or urban project; if contrary to standards and normative set in 24</p> <p>(3) does not comply with the obligations prescribed for the developer of the plan in the procedure for adoption of urban plans in Articles 26, 27, 28, 29, 30, 31, 36, 37, 44, 48, 49, 50 and 51 of this Law;</p> <p>(4) make/prepare an urban project contrary to the provisions of Articles 58, 59, 60, 61, 62 and 63 of this Law ; if contrary to standards and normative set in 24</p> <p>(5) prepare an expert audit contrary to the manner and content that are regulated in Article 48 of this Law;</p> <p>(6) prepare an expert audit in which it will not indicate the illegality, shortcomings, unjustification or inadmissibility of the planning solutions from the urban plans and the urban projects on which it performs an expert audit;</p> <p>(7) entrust the preparation of the urban plan, urban project, expert revision and other planning acts, elaborations and constituent parts of the urban documentation prescribed by this law, to natural or legal persons that do not meet the conditions for performing professional activities in the field of urban planning, regulated in Articles 67, 68, 70, 71 and 72 of this Law;</p> <p>(8) does not ensure the functioning of the inspection, ie the cooperation with the urban inspector as prescribed by Articles 83, 85, 86 and</p>	<p>Article 24 is authorizing the Minister of the Ministry for transportation and commutation to set (among other) the rules (standards and normative) for urban planning</p>	<p>Fines 500-2000 EUR</p> <p>(1) If plans deviate or are contrary to the closer content, form and manner of graphic processing proscribed in 19; 24</p> <p>(2) if contrary to standards and normative</p> <p>Paragraph 4 is somehow same as paragraph 2</p>		

	87 of this Law;				
Article 89	<p>(1) A fine in the amount of 2,000 euros in denar counter value shall be imposed for a misdemeanor on the mayor, ie the person authorized by the mayor and the president of the municipal council, the municipality in the city of Skopje, ie the city of Skopje, if he leads the procedure for preparation and adoption. of urban plans contrary to the provisions of this Law or by inaction or non-performance of the competencies prescribed by law, the competencies, duties or obligations obstruct the procedure for preparation and adoption of urban plans.</p>		<p>Penalty if they missed deadlines Paragraph 1 item 4 - for the mayor Paragraph 2 item 4 - for the Minister Offenses of officials and responsible persons in the legal entities adopting urban plans Article 89 A misdemeanor for decision makers Authorized by the mayor It is not foreseen who will do the numerous analyzes</p>		
Article 90	<p>3. Offenses of responsible persons of other entities (1) A fine in the amount of EUR 500 to 2,000 in Denar counter-value shall be imposed for a misdemeanor to the legal entities referred to in Article 47 paragraph (1) of this Law, ie to the Agency for Real Estate Cadastre, The Agency for Physical Planning and the State Inspectorate for Construction and Urbanism, state administration bodies, agencies and administrations, legal entities with competencies and public authorizations to perform activities related to the preparation, adoption and implementation of urban plans and in relation to public, communal and infrastructure activities and systems, if the necessary data and information and opinions are not submitted for preparation of the plans in accordance with Article 47 of this Law, that is, if they do not act in accordance with the provisions of this Law which refer to their obligations in the process of preparation, adoption and implementation of urban plans, from Articles 42, 43, 44, 49, 50, 53 and 54 of this Law. (2) A fine in the amount of EUR 500 in denar counter-value shall be imposed for a misdemeanor referred to in paragraph (1) of this Article to the responsible person in the legal entity, ie to the authorized person from the responsible</p>		<p>Offense in that set Agency State Inspectorate for Construction and Urbanism - subjects may be fined if they do not act in accordance with this Law</p>		

	person in the legal entity.				
Article 91	This article explain who is in charge Competent authority for conducting the procedure Competent body and conducting misdemeanor procedure Article 91 (1) The provisions of the Law on Misdemeanors shall be appropriately applied for misdemeanors and misdemeanor liability. (2) The competent body for conducting the misdemeanor procedure for the misdemeanors determined by this Law is a competent court.	Law on Misdemeanors The Court has jurisdiction (in some cases it is the Administrative Court and the Higher Administrative Court and in certain cases it may be the Misdemeanor Court)			
Article 93	Transitional provisions Article 93 (1) The initiated procedures for adoption, as well as the procedures for amending and supplementing the urban plans for which a planning program has been approved until the day of commencement of application of this Law, shall continue in accordance with the provisions of the laws according to which be completed within four years from the date of entry into force of this law. (2) If the procedures referred to in paragraph (1) of this Article do not end within the deadline referred to in paragraph (1) of this Article, they shall continue in accordance with the provisions of this Law.		Length of the procedure Needs attention		
Article 95	2) Urban-planning documentation that are approved in accordance with the Law on Spatial and Urban Planning are applied in the procedures for issuing a building permit in the parts that are in accordance with the urban plans that are in force for the same planning scope, until their harmonization with the provisions of this law. (3) The urban plan and the urban-planning documentation with which the subject of planning is a construction plot for which consent has been obtained for permanent conversion of agricultural land into construction land, which have been adopted or approved in accordance with Law on Spatial and Urban Planning will continue to apply if a building permit is provided within five years from the entry into force of this law.				
Article 103(3)			No specific approval! Who examine if they still comply with the law?		

ANNEX 2 - SCREENING – MAPPING LAW ON CONSTRUCTION / BUILDING

(„Official Gazette of the Republic of North Macedonia“ n0. 130/09, 124/10, 18/11, 36/11, 54/11, 13/12, 144/12, 25/13, 79/13, 137/13, 163/13, 27/14, 28/14, 42/14, 115/14, 149/14, 187/14, 44/15, 129/15, 217/15, 226/15, 30/16, 31/16, 39/16, 71/16, 132/16, 35/18, 64/18 и 168/18 и „Official Gazette of the Republic of North Macedonia“ n0. 244/19, 18/20 и 279/20)

About 480 legal entities listed with license for BUILDING DESIGN (A16), REVISION OF DESIGN DOCUMENTATION (A20), CONSTRUCTION MANAGER (A14), CONSTRUCTION CONTRACTOR (A26), SUPERVISION OF CONSTRUCTION OF BUILDING (A34) AND FACILITY MAINTENANCE MANAGER (A98);
Source: Registrar in the MTC from 2017 available on ministry web.

LAW ON STATE OMBUDSMAN(?13-a); Law on Central Register; Law on inspection/supervision/ (A2-a); Law on Prohibition and Prevention of Performing Unregistered Activity; **Law on protection of cultural heritage (A10, A72(6), A133(3), 134(4)); Law on administrative inspection(A149); Law on Housing (A98); Law on Construction Land (A60); Law on general administrative procedure;** Law establishing a state commission for decision-making in the second level in the field of inspection supervision and misdemeanor procedure

CONCERNS the Government Law Article 30><Rules of Procedure of the Government (A111-A114) specifically A114 >> 67-a

Article 30 (1) The **Government supervises the work** of the ministries and other bodies of the state administration and the administrative organizations.

(2) The Government **has the right and duty to repeal or annul** a regulation or other act of the ministries, state administration bodies and administrative organizations that is not in accordance with the Constitution, law or other regulation of the Assembly, ie regulation of the Government.

(3) The Government has other rights and duties towards the state administration bodies determined by law.

Article 103 Procedure upon a proposal for repeal, ie annulment of a regulation which is adopted by a minister, ie director

Article 114 To exercise the functions of the Government in relation to overseeing the work of ministries and other bodies of state administration, the **Secretariat for Legislation reviews the regulations** adopted by the ministers and directors who manage the independent bodies of state administration from the point of view of their compliance with law or other regulation or act of the Assembly and the regulations and other acts of the Government and European legislation union, as well as from the point of view of the unity of the legal system and gives its opinion to the Government on that.

Government Law Article 40(2) The Secretariat for Legislation performs the activities related to ensuring the consistency of the legal system and giving expert opinions for harmonization of the draft laws and other regulations with the Constitution of the Republic of Macedonia, with the legislation of the European Union and with the international agreements ratified in accordance with the Constitution of the Republic of Macedonia and gives expert opinions on the regulations of the municipality for which the Ministry of Local Self-Government will request it.

ARTICLE	CONTENT	OTHER LINKED LAW	COMMENTS	RISK IN THE LAW	RISK IN IMPLEMENTATION
Article 2-a	The provisions of the Law on Inspection shall be applied in the procedure for performing the inspection, unless otherwise regulated by this Law.				
Article 4-a	(10) The form and elements that should contain the opinion on the designed and constructed degree of mechanical resistance, stability and seismic protection of the building shall be prescribed by the Minister managing the body of the state administration responsible for the affairs in the field of spatial planning.		The opinion must be provided to the applicant in 15 days or 30 days if construction has more than 5000m ² . Otherwise, the opinion is considered positive and if in the future due to non-action damages occur, the obligation to compensate the damage will be on the burden of the entity that performs scientific research activity.		

Article 10	<p>7. Deviation from the basic requirements for construction</p> <p>In case of reconstruction or adaptation of a building registered in the National Register of Cultural Heritage, which provides persons with disabilities with unimpeded access, movement, residence and work, some basic requirements for the building may be waived in order to provide unimpeded access, movement, residence and work, after receiving a positive opinion from the Ministry of Labor and Social Policy and obtained consent from the body of the state administration responsible for performing the activities in the field of culture.</p>	<p>Law on protection of cultural heritage; Law on Culture</p>	<p>This means that someone is authorized to perform by discretionary power.</p> <p>Ministry of labor and Social policy; and Administration Office for Protection of Cultural Heritage (AO);</p> <p>Supervision by: Law on protection of cultural heritage; (A145(1)23. Performs the activities of the inspection supervision over the implementation of the regulations for protection of the cultural heritage in accordance with this Law. This waiver means that someone is authorized to perform by discretionary power must be examined in practice. Cultural heritage inspectors (A167(1)) The inspection for implementation of this Law and other regulations in the field of protection of the cultural heritage, with the exception of the inspection under the competence of the Archive, shall be performed by the Office through inspectors for cultural heritage (hereinafter: inspector).</p>		
Article 12	<p>(1) Participants in the construction are the holder of the construction right and legal entities that perform the works of design, audit, execution and supervision over the construction.</p> <p>(2) A foreign legal and natural person may</p>				

	be a participant in the construction under conditions determined by this Law. (3) The rights and obligations between the participants in the construction are regulated by this and other law.				
	Investor				
Article 13	(1) Holder of the right to build is a legal or natural person owner of the land on which the construction is built, a person who has acquired the right to long-term lease of construction land, concessionaire, holder of the right of servitude for construction, a person owned by the land or the holder of the right to long-term lease of construction land transferred the right to build with a legal act, a person who acquired the right to build with a decision of a Bankruptcy Judge when selling the right to build in a bankruptcy procedure and a person who acquired with the right to build in accordance with the law (hereinafter: investor). (2) The investor is obliged to give the design, the revision of the projects, the construction and the supervision over the construction of buildings to legal entities that meet the conditions prescribed by this Law.		(1) definition of investor (2) obligatory requirement for licensed legal entity in building business venture		
Article 13-a	(1) State bodies, public enterprises and other entities established by the Government of the Republic of North Macedonia or the Assembly of the Republic of North Macedonia, the municipalities, the municipalities in the City of Skopje and the City of Skopje, as well as municipalities, municipalities in the City of Skopje and the City of Skopje right to permanent use of construction land for the purpose of construction of a facility in accordance with the Law on Construction Land, may transfer the right to build to a natural or legal person with the prior consent of the Government of the Republic of North Macedonia.	Law on Construction Land	Word “may” as optional Right to transfer the right go build arises from the right for permanent use of the land property of RNM, on approval obtained from the Government.	Word “may” as optional it is not must 1. The phrase “with the prior consent of the Government of the Republic of North Macedonia in the article is to be errased. 2. The paragraph 2) becomes paragraph 3). New paragraph 2) is introduced in A13-a: The Government of	Risk of Corruption; The novel is introduced because the ownership of the property in question may be transferred to natural or legal person. In case of conflict or other reason for court procedure the rights of the state are represented by the State oombudsmen in accordance to the Law on state ombudsman. His positive oppinion is supporting positive output for the state in the eventual despute among the partyes or a third party as well.

	(2) The bodies and entities referred to in paragraph (1) of this Article may transfer the building right only to a natural or legal person who may acquire the right of ownership in the Republic of North Macedonia in accordance with law, selected on the basis of a public call. by submitting bids.			the Republic of North Macedonia may give consent to the action of the bodies from paragraph 1 after positive opinion of the State ombudsman	
Article 13-b	<p>(1) The public call for transfer of the construction right shall be conducted by the Commission for implementation of the procedure for transfer of the construction right (hereinafter: the Commission), established by the body, ie the entity referred to in Article 13-a paragraph (1) of this Law.</p> <p>(5) The procedure for selection of the most favorable bidder shall be implemented if at least one bid has been received.</p> <p>(4) The only criterion for selection of the most favorable bidder to transfer the right to build is the amount of the offered percentage of the gross developed area of the part of the building which after construction will be handed over to the body, ie the entity referred to in Article 13-a paragraph (1) of this Law.</p> <p>(9) The contract for transfer of the construction right shall be concluded with the most favorable bidder with the prior consent of the Government of the Republic of North Macedonia.</p>	Law on the State Commission for deciding in administrative procedure and employment procedure in the second instance	<p>(1) How are commission members elected?</p> <p>Paragraphs (4) and (8) are the same!</p> <p>The procedure by Public call to select the best bidder is performed by Commission for implementation of the procedure for transfer of the right to build whose members are nominated by the body listed in 13-a(1)</p>	<p>The procedure does not consider use of the Law on public procurement</p> <p>The ownership is transferred to the party that has the right for permanent use of the land</p> <p>The bidding procedure must be by the Law on public procurement</p> <p>Needs identical intervention as in 13-a for (9) due identical reasons. (if approved by NV)</p>	Risk of Corruption
	Construction manager				
Article 14	(1) During the construction of buildings referred to in Article 57 of this Law, the investor may appoint a construction manager who on his behalf manages all organizational matters, monitors all phases of construction and performs financial and material monitoring of funds in the construction process. until obtaining approval for use.		Licensed legal entity (License by MTC) with employees having A and B authorization (from Chamber of Certified Architects and Engineers (A102-A126))		
Article 15	Designer Performs works in legal entity licensed with		Natural person with A or B authorization		

	A or B license		A license for first category (A57 (1))B license for second category (A57(2))		
Article 16	<p>Design license</p> <p>(1) The legal entity for design of buildings of the first category from Article 57 of this Law should have a license A for design, and for buildings of the second category a license B for design.</p> <p>(2) In order to obtain license A for design, the legal entity is required to submit:</p> <ul style="list-style-type: none"> - proof that he is registered to perform the respective activity and - proof that it has employed at least three engineers, one with authorization A for design and one with authorization B for design. <p>(3) With the request for obtaining a license B for design, the legal entity is required to submit:</p> <ul style="list-style-type: none"> - proof that he is registered to perform the respective activity and - proof that at least two engineers have been employed, one of whom has a B design authorization. 				
Article 17	<p>Design powers / authorization</p> <p>(1) For design of buildings of the first category from Article 57 of this Law, the Chamber of Authorized Architects and Engineers shall issue authorization A for preparation of project documentation, and for buildings of second category authorization B for preparation of design documentation.</p>				
Article 38(4)	<p>(4) A license issued in accordance with the provisions of this Law shall be revoked if it is determined that the legal entity - licensee has ceased to meet any of the conditions for issuing a license, or the legal entity has not fulfilled the obligation for liability insurance in an insurance company. in</p>		41-a		

	the Republic of North Macedonia in accordance with Article 41-a of this Law, or the legal entity has ceased to exist.				
Article 38(5)	(5) A contract for a contractor shall be revoked if the legal entity - contractor performs constructions contrary to the building permit or without a building permit, a supervision license shall be revoked if the legal entity for construction supervision prepares or certifies a written report for a certain phase for the construction with findings that are not in accordance with the performed works, prepare or certify a final report for performed supervision with findings that are not in accordance with the performed works, prepare or certify a report for performed technical inspection contrary to the provisions of Article 90 paragraphs (3) and (4) of this Law, a design license is revoked if the legal entity for design of constructions prepares or certifies design documentation contrary to the legal regulations, and a license for revision of design documentation is revoked if the legal entity for revision of project documentation prepared, ie certified a report for revision of the project documentation contrary to the legal regulations.				
Article 39(4)	(4) Authorization issued in accordance with the provisions of this Law shall be revoked if the competent body of the Chamber of Authorized Architects and Authorized Engineers determines that the natural person does not comply with the price list referred to in Article 109 item 7 of this Law, has not paid annual membership fee or does not comply. of the Code of Professional Ethics for Certified Architects and Certified Engineers				
Article 39(5)	(5) Authorization for construction engineer shall be revoked if the construction engineer performs constructions contrary				

	to the building permit or without building permit, authorization for supervising engineer shall be revoked if the supervising engineer prepares a written report for a separate phase of construction with findings that are not in accordance with the performed works, prepare a final report for performed supervision with findings that are not in accordance with the performed works, prepare a report for performed technical inspection contrary to the provisions of Article 90 paragraphs (3) and (4) of this Law, authorization for preparation of project documentation is revoked if the designer prepares design documentation contrary to legal regulations, and authorization for revision of project documentation is revoked if the auditor prepares a report for revision of the project documentation contrary to the legal regulations.				
Article 41	Participants in the construction of buildings referred to in Article 57 of this Law may provide for a bank guarantee , the amount of which will be determined by mutual agreement, which will guarantee timely and quality execution of works, compensation for possible damage during the performance of works, and timely payment for the performed works.		Wording “May” as option; may provide for a bank guarantee	Discretionary power amending	At least for undertakings of buildings of first category this should be obligatory This is true for some of buildings from second category
Article 41-a	(1) The participants in the construction of buildings referred to in Article 57 of this Law (investor, legal entities for design, audit, construction and supervision of the construction), shall be liable for the damage caused to third parties during the performance of their work and contractual obligations (2) The legal entities for design, audit, execution and supervision of the construction are obliged to have liability insurance for damage in an insurance company in the Republic of North Macedonia, which could cause their work		Article 57		

	to the investors or to third parties. (3) The annual insured amount for the total number of buildings for the participants in the construction of buildings of the first category referred to in Article 57 of this Law may not be lower than 10,000 euros in denar counter value, and for buildings of the second category may not be lower than 5,000 euros in denar counter value.				
Article 42			42(4)	License for foreign legal entity 104(2)2; 154(1)3; 156(1)8; 158(1)4 Project documentation: A6 Novel 44/15 > A74 A6; A7 Novel 278/20	
Article 57	1. Categorization of buildings		(1) Listed First category (2) Listed Second Category Relevant for supervision Relevant for misdemeanors		
	3. Procedure for issuing a building permit		A59-A67-a		
Article 59(1)	(1) The procedure for issuing a building permit is conducted in accordance with the provisions of the Law on General Administrative Procedure, unless otherwise regulated by this Law.	Law on general administrative procedure	Obligatory use in the procedure for issuing Building permits		
Article 59 (2) – (22)	(2) In order to obtain a building permit, the investor shall submit an application in electronic form to the competent body referred to in Article 58 of this Law with the following documentation:		A134		
Article 67	(1) The investor is obliged to report in writing the beginning of the construction to the competent body from article 58 of this law, the construction inspection and the labor inspection, before the beginning of the construction. (3) If the investor does not act in accordance with paragraphs (1) and (2) of this Article, the competent body that issued the building permit shall adopt an act for invalidity of the permit which shall be submitted to the body responsible for		(1)<<150		

	<p>keeping the public book for registration of rights. of real estate and it is the basis for deleting all notes and pre-notes related to real estate.</p> <p>(5) The municipal council, ie the councils of the municipalities of the city of Skopje, with a decision can determine a time period during the calendar year in which buildings cannot be built, ie construction works can be performed on a certain tourist area. The investor is obliged to harmonize the construction, ie the execution of the construction works, in accordance with the decision, except in the cases when the subject of construction is a construction of public interest determined by law.</p> <p>(8) As an exception, the council of the municipality, ie the councils of the municipalities of the city of Skopje may determine the appearance of one or more buildings in a certain area on the territory of the municipality, if they determine that it is important for the municipality, adopting a program consists of data and directions for the appearance of the building, ie the buildings and a graphic representation of the determined appearance.</p>				
Article 60	<p>(1) The manner and the procedure for arranging the construction land shall be performed in accordance with the Law on Construction Land and the regulations arising from this Law.</p> <p>(2) If the competent body does not arrange the construction land in accordance with the contract for arranging the construction land, the investor shall not bear consequences for the untimely completion of the construction.</p>	Law on Construction Land	A68; A150; A151		
Article 67-a	(1) The Municipal Council, the Municipal Council in the City of Skopje, ie the Council of the City of Skopje with a decision may determine the appearance of the facade of one or more buildings that are put into use and/or for which extension and/or upgrade		Wording "may"	Discretionary power Government Law	Discretionary power

	is foreseen, or final decision has been made to determine the legal status of an illegal object in accordance with the Law on dealing with illegally constructed objects is delivered for them, if they determine that it is important for the municipality, the municipality in the city of Skopje, ie the city of Skopje.				
	4. Deadline for construction				
Article 68	<p>(1) The investor is obliged to build the buildings of the first and second category within a period not longer than ten years, from the day the building permit enters into force.</p> <p>(2) As an exception to paragraph (1) of this Article for line infrastructure constructions, for functional parts of infrastructure constructions as well as for infrastructure constructions composed of several parts, of which at least one part is line infrastructure referred to in Article 57 paragraphs (1) and (2) of this Law, the competent body may, at the request of the investor, no later than three months before the expiration of the period referred to in paragraph (1) of this Article, extend the deadline for completion of construction for a maximum of five years from the deadline specified in paragraph (1) of this article.</p> <p>(3) The form and content of the form of the request for extension of the deadline referred to in paragraph (2) of this Article and the necessary documentation, as well as the form and content of the decision referred to in paragraph (2) of this Article shall be prescribed by the Minister managing the body. the state administration responsible for performing the activities in the field of spatial planning.</p>	(2)(3) Law on General administrative procedure	(2) > 57(1), (2) Wording "may"	(2) optional may (2) extension of time period up to 5 years (3) DR Authorises the Minister of transport and comutation to prescript as in paragraph	<p>Discretionary power</p> <p>(2) optional may</p> <p>(2) extension of time period up to 5 years</p> <p>(3) no specific procedure;</p> <p>(3) contents of the act may be "custom tailored" when needed</p> <p>All general acts of the members of executive may be annulled by the government (Government law A30(2));</p> <p><i>as for an example:</i></p> <p>If this extension is provided (for example for 5 years, and Government annuls this extension and/or makes it 1 year and it is not sufficient period than the venture will/may bankrupt)</p>
Article 72(6)	In case of damage to buildings due to natural phenomena or by military and other demolition, the building depending on the degree of damage can be returned to its previous condition without a building	Law on protection of cultural heritage	A134(2)		

	<p>permit, and in accordance with the building permit, ie the approved project based on which is built. In the case of a building registered in the National Register of Cultural Heritage, it is necessary to request approval in accordance with the regulations in the field of protection of cultural heritage.</p>				
Article 73	<p>(1) A building permit is not required for the following buildings: lines 1 - 33</p> <p>(3) The buildings referred to in paragraph (1) lines 16, 17, 18, 21, 23, 24 and 25 of this Article, which are not provided by the urban plan, ie urban planning documentation, as well as the modular buildings or a group of modular buildings, intended for performing health activity that are placed on the site of existing health institutions, are provided with a program consisting of graphic and textual part, where the textual part contains data on the building and the space for placing the building and the graphic part consists of a display of the existing and planned situation.</p> <p>4) The program from paragraph (3) of this article for the buildings for the needs of the municipalities, the municipalities in the city of Skopje and the City of Skopje is approved by the Municipal Council, the Municipal Council in the City of Skopje ie the Council of the City of Skopje, and for the buildings whose construction is financed from the Budget of the Republic of North Macedonia or by legal entities in full or dominant ownership of the Republic of North Macedonia or with funds from the European Union or other international organization as well as temporary buildings for accommodation of workers during the construction of line infrastructure facilities of the first category of Article 57 of this Law and for modular buildings or a group of</p>		Discretionary power of the Minister for transportation and commutatio;	Discretionary power Same person issues the Guidelines from paragraph (5) and approves the program based on those Guidelines in paragraph (4)	<p>Discretionary power</p> <p>This article describes the basic situation in building modular hospitals one of those had catastrophic fire failure with 14 victims in Tetovo.</p>

	<p>modular buildings, intended for performing health activity that are placed on the site of existing health institutions, is approved by the body of state administration responsible for performing the activities in the field of spatial planning.</p> <p>(5) The Minister managing the body of the state administration responsible for performing the activities in the field of spatial planning shall adopt Guidelines for the manner of preparation of the program referred to in paragraph (3) of this Article.</p>				
Article 82	<p>(1) Before the beginning of the earthworks on the construction plot, the investor is obliged to provide marking of the projected construction on the field, with appropriate signs by a sole proprietor, ie trade company for geodetic works that prepares a geodetic report for marking the designed construction . (2) The manner of marking the projected construction on the field shall be prescribed by the Minister who manages the body of the state administration responsible for performing the activities in the field of spatial planning.</p>				
Article 83	<p>(1) The contractor is obliged to enclose the construction site in order to prevent uncontrolled access to the construction site with an appropriate fence in a way that the work in the construction site will not endanger the passers-by.</p> <p>(2) On the construction site that extends over a larger area (railways, roads, transmission lines, etc.), the parts of the construction site that cannot be fenced, must be protected with certain traffic signs or marked in another way.</p> <p>(3) The construction site must be marked with an information board which must contain the name, ie name of the participants in the construction, name and type of construction under construction, the competent authority referred to in Article 58 of this Law, number and date of the issued</p>		(3) >> A58 >>		

	approval for construction, as well as the indication that it is a protected immovable cultural heritage in accordance with the law, if that construction is registered in the National Register of Cultural Heritage.				
Article 97(3)	(3) For conversion of a special part of a building, apartment or part of an apartment, the owner of the building shall submit a request for conversion to the competent body referred to in Article 58 of this Law and shall submit with the request:				
Article 98	<p>Maintenance of a building</p> <p>(1) The owner of the facility is obliged through current and investment maintenance to preserve the basic requirements for the construction, in accordance with the project for use and maintenance.</p> <p>(2) For the matters referred to in paragraph (1) of this Article, the owner of the building may appoint a legal entity - manager for current and investment maintenance of buildings of first and second category (except for residential buildings over three levels) from Article 57 of this Law. .</p> <p>(3) A maintenance manager may be a legal entity registered in the Central Register for performing an appropriate activity and which has a license for maintenance manager.</p>	Law on housing	<p>Licensed legal entity</p> <p>(License by MTC)</p> <p>Current and investment maintenance manager</p> <p>Optional for (A57(1);(2))</p> <p>builds with less than 3 levels</p>	<p>Legal risk</p> <p>Use of the word may is considered as must (may be means must be)</p> <p>In paragraph 2 it means may</p> <p>In paragraph 3 it means must</p>	

	Supervision				
Article 127	The supervision over the implementation of this law and the regulations adopted on the basis of this law is performed by the body of the state administration responsible for performing the activities in the field of spatial planning.		(A127-A149) Inspection supervision		
Article 128(1)	(1) The works of inspection supervision over the application of this Law and the regulations adopted on the basis of this Law shall be performed by construction inspectors of the State Inspectorate for		Introducing two categories of inspectors		

	Construction and Urban Planning (hereinafter: <u>construction inspectors</u>) and construction inspectors of the municipalities and municipalities in the City of Skopje. (hereinafter: <u>authorized construction inspectors</u>).				
Article 128(2)	(2) A construction inspector shall perform inspection supervision over buildings of the first category, and an authorized construction inspector shall perform inspection supervision over buildings of the second category referred to in Article 57 of this Law.		Categories defined in article 57		
Article 128(3)	(3) The inspectors referred to in paragraph (1) of this Article shall perform inspection supervision in accordance with the provisions of the Law on Prohibition and Prevention of Performing Unregistered Activity.	Law on Prohibition and Prevention of Performing Unregistered Activity	Meaning ... only legal entities that are registered for building, and obtained proper licenses may perform building works ...		
Article 128-a	The State Inspectorate for Construction and Urbanism has the capacity of a legal entity with its own budget account as a first line budget user, independently conducts employment procedures in accordance with law and decides on employment rights and obligations.		Rules for the State Inspectorate for Construction and Urbanism Employees are state (civil) administrative clerks (servants)		
Article 128-b	(1) (2) (3) 3) has acquired at least 240 credits according to ECTS or completed VII / 1 degree - Faculty of Civil Engineering or Architecture; (3) 4) has at least six years of work experience after graduation, in the relevant field;		The Government appoints and dismisses the director (1) of the inspectorate after public announcement (2). Competences are proscribed in (3)	The competences of the elected person in concordance to (3) may be lesser than the competences of the employees (construction inspectors), i.e. does not have license A or B to be inspector.	The risk in the law imposes serious risks in implementation/practice
Article 130	Competences and conditions for Building and Authorized building inspectors (2) The procedure for filling a vacancy for an authorized construction inspector in the municipality, ie the city of Skopje shall be conducted in accordance with the Law on Inspection Supervision.	Low on administrative clerks Law on Inspection Supervision	Clear definition for the appropriate clerk level B and/or V		

Article 131	<p>(1) A construction inspector, ie an authorized construction inspector within the competencies determined by this and other law, has the right to perform inspection supervision during the construction, as well as inspection of a facility when the structural elements are converted in it in terms of their mechanical resistance, stability and seismic protection, as well as when converted from residential to commercial space and vice versa.</p> <p>(2)</p> <p>(3)</p> <p>(4)</p> <p>(5) If the competent construction inspector ascertains that some of the conditions for revocation of the license provided in Article 38 paragraphs (4) and (5) of this Law have occurred, as well as for revocation of authorization provided in Article 39 paragraphs (4) and (5) from this Law, is obliged to submit a proposal for revocation of the license, ie the authorization with a report for the ascertained irregularity to the body competent for revocation of the license, ie authorization.</p>		<p>131(2) opt. may request support from Mol in field/terrain interventions. Must be provided with.</p> <p>38(4), (5)</p> <p>39(4), (5)</p>		
Article 132	(1) – (6)		Way and rights how inspectors work and authorizations they can perform		If not clearly elaborated in the administrative act for certain authorization may impose DR risk
Article 133			ORDERS		
Article 133(3)	<p>(3) In case of termination of the construction, for the construction that is registered in the National Register of Cultural Heritage, the construction inspector, ie the authorized construction inspector shall inform the body of the state administration responsible for performing the activities in the field of culture.</p>	Law on protection of cultural heritage	National Register of Cultural Heritage	<p>Time frame; Manner of informing</p> <p>Why the inspector; RATHER inspectorate or mayor of the LSG</p> <p>Why the body of the state administration responsible for performing the activities in the field of culture</p>	

				PREFERABLY Administration for protection of cultural heritage	
	Construction removal				
Article 134(1)p.1- p.6	(1) The construction inspector, ie the authorized construction inspector with a decision shall order the investor to remove the construction, ie its part, if:		A59; A133		
Article 134(2)	(2) The construction inspector, ie the authorized construction inspector shall with a decision order the contractor to remove the construction from paragraph (1) of this Article if he does not act in accordance with Article 72 paragraph (6) of this Law.		72(6)		
Article 134(3)	(3) In case of removal of a building registered in the National Register of Cultural Heritage, the construction inspector, ie the authorized construction inspector shall request the consent of the body of the state administration responsible for performing the activities in the field of culture.	Law on protection of cultural heritage		Same as 133(3) Needs approval has no time limits to obtain it from the competent body	
Article 134(4)	(4) The authorized construction inspector, if he ascertains that the owner of the special part of the building, apartment or part of the apartment has performed conversion without approval for conversion referred to in Article 97 paragraph (3) of this Law, shall issue a decision obliging the owner to return the special part of the building, the apartment or the part of the apartment in its original condition.		A97(3)		
Article 135(1)p.1-7	The construction inspector, ie the authorized construction inspector with a decision will order the investor to remove:		A73, A79, A80, A81		
Article 135-a			Procedure Decision with order for removal		
Article 135-b	(2) The appeal filed against the decision referred to in paragraph (1) of this Article shall not postpone the execution of the decision.		Procedure Decision with order for removal A74	shall not postpone the execution	
	Closing of the building plant				

Article 136			A134, A135 Closing of a building site		
	Inspectors Resolution				
Article 137(3)	(3) When the identified irregularities and deficiencies can cause or cause immediate danger to life and health of people or financial damage or damage to property of greater value or endangering the environment or endangering the public interest, the inspector with a decision shall impose an inspection measure, such as to charge, order, prohibit and other measure , if determined by a special law, which will most appropriately achieve the purpose of the inspection.	In this article the inspector may directly impose inspectoral measure in accordance with other law:	immediate danger to life and health of people financial damage damage to property of greater value endangering the environment endangering the public interest		
Article 137(4)	(4) Against the decision of the inspectors referred to in Article 128 paragraph (1) of this Law, an appeal may be filed within 15 days from the day of receiving the decision to the competent body for deciding in the second instance.	Law establishing a state commission for decision-making in the second level in the field of inspection supervision and misdemeanor procedure			
Article 137(5)	(5) The appeal filed against the decision of the inspectors referred to in Article 128 paragraph (1) of this Law shall not postpone the execution of the decision.				
Article 139(1)	(1) In the decision referred to in Article 137 of this Law, the construction inspector, ie the authorized construction inspector, in <i>addition to the determined measures referred to in Article 138 of this Law</i> , may impose a ban on construction and use of the facility by closing the construction site. <i>(The marked words are revoked by a Decision of the Constitutional Court of the Republic of Macedonia published in the "Official Gazette of the Republic of Macedonia" No. 49/11)</i>			Discretionary power Wording "May"	
Article 139(3)			This paragraph is obsolete because article 138 is abolished by the Constitutional court in 2016 !!!		
Article 141			Obligatory elements in the inspectors Resolution		

Article 144	(1) When the construction inspector ascertains that the municipality has not authorized a construction inspector to perform the activities determined by this Law, he / she shall compile a report which he / she shall submit to the minister managing the body of the state administration responsible for performing the works in the field of spatial planning. for obtaining authorization to perform the activities under the competence of an authorized construction inspector. The minutes together with the proposal are submitted to the mayor of the municipality, ie the mayor of the municipality in the city of Skopje. The Minister who manages the body of the state administration responsible for performing the activities in the field of spatial planning on the basis of the proposal, may give authorization for performing the activities within the competence of an authorized construction inspector.		The question here is what is happening when the Local self-government does not appoint an authorized building inspector	Wording "may"	Discretionary power of the Minister for Transportation and commutation
Article 144(5)	(5) The body of the state administration responsible for performing the activities in the field of finance after receiving the notification referred to in paragraph (4) of this Article, the revenues of the municipality, ie the municipalities in the area of the city of Skopje on the basis of compensation for arranging construction land, in the amount of the incurred expenses, redirects them to the account of the Budget of the Republic of North Macedonia.		Interesting situation resolution If LSG does not have authorized building inspector than his duties are (may be) performed by building inspector However the taxes achieved for building permits go to state budget instate staying for the LSG		
Article 145	(1) If the construction inspector determines that the authorized construction inspector does not perform the activities prescribed by this Law, he / she is obliged to immediately submit a written notification to the mayor of the municipality for non-execution of the works.		This notification might also be addressed to the Inspection Council to perform his legal obligations and duties by Low on inspectoral supervision A18(1) 1; 9; 12; 19; 21 as appropriate		
Article 145(2)-(6)			(6) Same as 144(5)		

Article 146	<p>(1) When performing the inspection, the inspectors referred to in Article 128 of this Law shall be obliged to check whether the administrative acts issued on the basis of this Law are in accordance with it and if they determine that the administrative acts issued contrary to this Law, they shall be obliged to submit a written proposal for annulment of those administrative acts with a report on the established situation, to the body that adopted them.</p> <p>(2) The competent body that has adopted the administrative act is obliged to act upon the proposal and within eight days to adopt a decision by which it will annul the issued administrative act or a decision by which it will reject the proposal for annulment.</p>	Law on general administrative procedure	Control mechanism State >> LSG		
Article 147	<p>8. Supervision over the legality of the operation of the bodies of the municipality, ie the bodies of the municipalities in the city of Skopje</p> <p>(1)The supervision over the legality of the work of the bodies of the municipality, ie the bodies of the municipalities in the city of Skopje is performed by the body of the state administration responsible for performing the works in the field of spatial planning, for works within their competence related to construction of second category construction. Article 57 of this Law.</p>		A57 second category building		
Article 148	<p>(1) When performing the supervision over the legality of the work of the bodies of the municipality, ie the bodies of the municipalities in the city of Skopje, the body of the state administration responsible for performing the works in the field of spatial planning shall perform the following works:</p>		Authorizations in supervision State; LSG		
Article 149	<p>(1)When the body responsible for performing the activities in the field of spatial planning, ie the construction inspector determines that the municipality, ie the authorized construction inspector does not adopt the acts determined by this</p>	State administrative inspectorate Law on administrative inspection	Deadlines		

	Law within the stipulated deadlines, they shall submit a proposal for inspection to the State Administrative Inspectorate who is obliged to perform inspection in accordance with the Law on Administrative Inspection.				
	Misdemeanor provisions		FINES (A150-A165) for a. legal entity b. for head of the legal entity c. for natural person		
Article 150(1) – (3)	1) entrust the design, revision, construction and supervision over the construction of the buildings of the first category from Article 57 of this Law to a person who does not meet the conditions in accordance with this Law for performing that activity (Article 13 paragraph (2));		Buildings first category A57 APPLICABLE TO a; b; c 1 A13(2); 2 A14(2); 3 first category A57 time line in A68; 4 first category A57 written information from A67(1); 5 security measures A82, 83		
Article 151	Buildings second category A57	A163-b(1) Commission for misdemeanors	Buildings second category A57 APPLICABLE TO a; b; c 1 A13(2); 2 68(2)3; 3 67(1); 4. security measures A82, 83		
Article 151-a	... if it does not provide marking of the designed field construction		APPLICABLE TO a; b; c A82		
Article 151-b	(1) A fine in the amount of 2,000 to 3,000 euros in denar counter value shall be imposed on a legal entity-investor if, after a significant reconstruction of a building to which the Rulebook on energy performance of buildings applies, it does not provide a certificate of energy performance of the building issued. by a sole proprietor or a legal entity that holds a license to perform energy control in accordance with Article 97-a of this Law. (3) A fine in the amount of EUR 250 in Denar counter-value shall be imposed for the misdemeanor referred to in paragraph (1) of this Article to a natural person -	A163-b(1) Commission for misdemeanors	APPLICABLE TO a; b; c A97-a		

	investor.				
	2. Offenses of a legal entity for design of buildings and of a designer				
Article 152	1) performs design works without a design license (Article 16 paragraph (1)); 2) employ a foreign natural person as a designer without a confirmed authorization from the chamber (Article 42 paragraph (4)) and 3) prepare or certify project documentation contrary to the legal regulations.		APLICABLE TO a; b 1) 6(1); 2) 42(4); 3) general concordance		
Article 152-a	... if the construction is not designed in accordance with Article 11 paragraph (1) of this Law.		APLICABLE TO a; b 11(1)		
Article 153	1) has developed a project without a design authorization (Article 17 paragraph (1)) and 2) has prepared a project contrary to the legal regulations.		1) 17(1); 2) general concordance		
Article 153-a	if the construction is not designed in accordance with Article 11 paragraph (1) of this Law		A11(1)		
	3. Offenses of a legal entity for performing an audit and an auditor				
Article 154	...for auditing project documentation 3) prepare or certify a report for revision of project documentation contrary to the legal regulations		APLICABLE TO a; b 1) A23(1); 2) 42(4);		
Article 154-a	... for auditing project documentation if the auditor certified a project that was not prepared in accordance with Article 11 paragraph (1) of this Law.		APLICABLE TO b; c 1) A11(1)		
Article 155	1) performed an audit without having an authorization for audit of project documentation (Article 24 paragraph (1)); 2) has audited the project documentation, prepared by the legal entity in which he is employed (Article 20 paragraph (3)) and 3) performed an audit contrary to the legal regulations.		APLICABLE TO c 1) A24(1); 2) 20(3) 3) general		
Article 155-a	... certified a project that has not been		APLICABLE TO c		

	developed in accordance with Article 11 paragraph (1) of this Law		1) A11(1)		
	4. Offenses of a legal entity-contractor and a construction engineer				
Article 156			contractor APPLICABLE TO a; b; c		
Article 156-a			A57 first category contractor APPLICABLE TO a; b; c		
Article 156-b			A57 second category contractor APPLICABLE TO a; b; c		
Article 156-v	if during the construction of constructions it does not provide evidence for the origin of the construction-technical stone, construction sand and gravel (Article 29 paragraph (1) line 6)		APPLICABLE TO a; b A29(1)6		
Article 156-g			APPLICABLE TO c		
Article 156-gj			APPLICABLE TO a; b; c		
Article 160	(1) A fine in the amount of EUR 4,000 to 5,000 in Denar counter-value shall be imposed for a misdemeanor to the legal entity - investor and the contractor if they continue with the construction of buildings of the first category from Article 57 of this Law and the performance of certain works in cases when a decision was made to stop the construction (Article 133 paragraph (1)) and after the closure of the construction site (Article 136 paragraph (1)). (2) A fine in the amount of EUR 250 in Denar counter-value shall be imposed on a natural person - investor, for the misdemeanor referred to in paragraph (1) of this Article.	A163-b(1) Commission for misdemeanors			
Article 162-a	(1) A fine in the amount of EUR 1,500 to 2,000 in Denar counter-value shall be imposed for a misdemeanor to the legal entity - investor and contractor if they continue with the construction of buildings of the second category from Article 57 of this Law and the performance of certain works in cases when a decision was made to stop the construction (Article 133	A163-b(1) Commission for misdemeanors			

	<p>paragraph (1)) even after the closure of the construction site (Article 136 paragraph (1)).</p> <p>(2) A fine in the amount of EUR 250 in Denar counter-value shall be imposed on a natural person - investor, for the misdemeanor referred to in paragraph (1) of this Article.</p>				
Article 163-b	<p>(1) The competent body for conducting the misdemeanor procedure for the misdemeanors determined by this Law is a competent court, except for the misdemeanors determined in Article 151-b paragraph (3) of this Law, Article 160-a paragraph (2) of this Law and Article 162 paragraph (2) of this Law, for which the competent body is a commission for misdemeanors formed by the minister who manages the body of the state administration responsible for performing the activities in the field of spatial planning.</p> <p>(2) Against the decision of the Commission referred to in paragraph (1) of this Article, a procedure may be initiated before a competent body in accordance with the Law on Misdemeanors.</p>	for the misdemeanors determined in Article 151-b paragraph (3) of this Law, Article 160-a paragraph (2) of this Law and Article 162 paragraph (2) of this Law, for which the competent body is a commission for misdemeanors	Competent body in paragraph (2) is The State Commission for deciding in the second instance in the field of inspection and misdemeanor procedure		
Article 165	<p>(1) For the misdemeanors provided by this Law, the inspectors referred to in Article 128 paragraph (1) of this Law, before submitting a request for initiating a misdemeanor procedure before a competent court or misdemeanor body, shall conduct a settlement procedure by issuing a misdemeanor payment order in accordance with Law on Misdemeanors.</p>	settlement procedure by issuing a misdemeanor payment order in accordance with Law on Misdemeanors .	Competent court in this case is Misdemeanor Court		

ANNEX 3 - RECOMMENDATIONS

RECOMMENDATIONS IN THE AREA OF ECOLOGY (ENVIRONMENT PROTECTION including WATERS, URBAN PLANNING AND CONSTRUCTION)		
LAW ON ENVIRONMENT PROTECTION (and LAW ON WATERS)	LAW ON URBAN PLANNING	LAW ON CONSTRUCTION
Recommendation 1- To reduce timing of the process of inspection / supervision in the Law, Article 208 (a)	Recommendation 1 - Municipalities should always reserve a percentage of their budgets for the activity making and adoption of Urban plans to avoid breaking the time-limit set for this activity.	Recommendation 1 The article 13-b shall be Rephrase to be harmonized with the Law on public procurement
Recommendation 2 – The Article 194-a should be amended in order fix with clear provision number of possible mandates for the director of the State environmental inspectorate.	Recommendation 2 To Amend Article 23, paragraph 6 with a right to appeal on negative opinion of the Minister. In case the Minister don't reply in a time-frame of 15 days, to consider that the opinion is positive.	Recommendation 2: Director of the State construction inspectorate should have appropriate license for being inspector in the state inspectorate or obtain the appropriate license in one in the first 2 years of mandate. This will improve the overall situation regarding Discretionary powers in selection of candidates and manner of professional managing with the inspectorate.
Recommendation 3 – Director of the State environmental inspectorate should have	Recommendation 3 - In Article 48, Paragraph 2 it should be clearly stated how the selection	Recommendation 3: To clearly define in the legislation the duration of mandate for the

appropriate license for being inspector in the state inspectorate or obtain one in the first 2 years of mandate. This will improve the overall situation regarding Discretionary powers in selection of candidates and manner of professional managing with the inspectorate	procedure is conducted for the selection of the Legal entity that will make the expert revision for Urban plans from Article 10, Paragraph 1, points 1,2,3, and 4. Additional recommendation is to harmonize the procurement for this service with the Law on Public procurement.	position of director of construction inspectorate and number of mandates.
Recommendation 4 – In the Law of environment Article 194 b to proscribe specific adequate education for the position of director of Environment inspectorates as it is required for inspectors.	Recommendation 4 - In order to strengthen the transparency in the preparation of Urban plans, it is suggested to proscribe an obligation of the body responsible for the procedure for preparation and adoption of the plan to not continue the preparation and adoption if the public presentation and public survey were not conducted through the system of e-urbanism. This is due to the fact that during the interviews with municipal officials it became clear that majority of municipalities are not participants in the e-urbanism system, which jeopardizes the transparency of the whole procedure and reduces the trust of citizens for the purposes of Urban plans.	Recommendation 4-a: To clearly define in the legislation limits of the scope of discretionary power of the State construction inspector and “authorized construction inspector” regarding the part concerning “undertake other works in order to prevent the construction if the construction is performed contrary to this Law”.
Recommendation 5 - To define clearly the conditions (numbers, mandates, remuneration) for the members of the Commission for best available techniques. The article 104 should be reworked in meaning of number of members in the commission, their fair remuneration, their mandate etc.	Recommendation 5 - To proscribe a solution for secondary examination in justification in delivering negative decision. This may be done by the Agency for Spatial planning.	Recommendation 4-b: In the case when inspector decide to undertake other works in order to prevent the construction if the construction is performed contrary to this Law, the entities involved in the construction must have right for prompt suspendable legal remedy.
Recommendation 6 - To avoid confusion the	Recommendation 6 - The activities of the	Recommendation 5: To define a time-frame in

Paragraph IV and V in article 243 should be singled out in a new article specific for physical persons. This recommendation is founded because the Title of the Article 243 is "Misdemeanors sanctions for legal entities.	Ministry of Transportation in the direction of harmonization of the Article 81 with the Law on Public procurement through adoption of Legal amendments to the text of the Article are strongly supported. This harmonization help to avoid the risk of abuse of discretionary rights for selection of participants that provide services for preparation of Urban plans.	the legislation for use of discretionary powers of State construction inspector and authorized construction inspector for every situation listed in paragraph 1 of the article 133 of the Law on construction
Recommendation 7- The paragraph 4 of the Article 244 of the Law on the Waters should be singled out in an article for physical persons. The other option is to change the title of the article	Recommendation 7 - To clearly state the name of the authorized body that is making decision in the second instance.	Recommendation 6: To define a time-frame in the legislation for inspector to inform the Ministry of culture
Recommendation 8 - To clarify where is the competence of the competent court and where is the competence of the competent inspector in the Article 243 of the Law on the Waters	Recommendation 8 - In the Article 85, to change words « mandatory punishment » into « sanction »	Recommendation 7-a: To delete the word "may" in the article 144 (1)
Recommendation 9 - To precise which court(s) is(are) competent for conducting misdemeanor procedures in case of Article 243 of the Law on the Waters	Recommendation 9: In order to define clear conditions in the legislation for licensing for performing revisions of Urban plans Amend the Article 132 of the Law on Misdemeanors by removing the veto or name the new entity where current appeals may be submitted.	Recommendation 7-b: To further frame discretionary power of relevant the Minister regarding issuing authorizations indicated in article 144 and article 145 and other articles with similar circumstances.
Recommendation 10 - To redraft Paragraph 7 of the article 244 of the Law on the Water in order to clearly order for the competent body in competent procedure to impose the sanction temporary bam on performing a certain activity.	Recommendation 10 - To clearly state the name of the authorized body that is making decision in the second instance.	Recommendation 7-c: State construction inspector should have the obligation to inform the Inspection council on the date when he/she submitted the suggestion for issuing authorization and the date when the authorization was issued for the specific case.

<p>Recommendation 11 - To modify wording of Article 196 (paragraph 1) Alinea 5. Wording “to provided by certificate” should be deleted.</p>	<p>Recommendation 11: The wording “appropriate professional results” needs to be supported measurable and comparable.</p>	<p>Recommendation 8: State authorized bodies should have obligation to inform the Inspection council about cases when municipalities does not have an employed Authorized construction inspector in order to avoid possible abuse of discretionary power from mayors. Inspections should be independent of political interference but at the same time inspectors need to be accountable to ministers. With this recommendation the goal is to reduce risks of corruption and to relax inspection from political interferences due to their accountability to relevant Minister.</p>
<p>Recommendation 12 To change the title of articles Articles 243, 244, 245 or to single out the paragraphs in separate articles in order to avoid confusion and legal ignorance.</p>		

RECOMMENDATION IN THE AREA OF EMPLOYMENT (PUBLIC ADMINISTRATION, EDUCATION, HEALTH, CULTURE)

Recommendation 1

In the legislation related to public sector, administrative servants and public sector employees, there should be clear provisions with articles from the “general” labor legislation i.e. the Law on labor relations (Labor Law) relate to the employees in this sector.

Recommendation 2

The director of the State labor Inspectorate should have appropriate educational degree in law or some of the technical fields required for OSH inspectors and passed exam for inspector. If not the director should pass an inspector exam in the first two years of his mandate.

Recommendation 3

The Article 24 should be reconsidered in the part “except for the provisions of Articles 16, 17, 18, 19 and 26 paragraph 3”

Legal solutions in this provisions should be established as provisions in the current law, with necessary attention to avoid collisions with current legislation.

GENERAL RECOMMENDATIONS
Recommendation 1: Any occurrence of the word may/can in the viewed legislation to be further scrutinized for discretionary rights, hence to avoid their abuse. Clear and detailed guidance on enforcement aimed at ‘framing’ discretion, while promoting compliance and ensuring that the measure is effective would be a valuable for implementation of legislation.
Recommendation 2: Any occurrence of the word competent court or competent body to be further scrutinized to avoid legal uncertainty.
Recommendation 3: The laws in which misdemeanor sanctions are prescribed shall be harmonized with the provisions of the Law of Misdemeanors. If misdemeanor sanction is proscribed as in European legislation the Directive / Resolution shall be stated.
Recommendation 4: The existence of the State Commission for deciding in the second instance in the field of inspection supervision and misdemeanor procedure should be determined for its operations. The Law on Inspectoral supervision should be amended appropriately.
Recommendation 5 : The control of work of inspectors should be strengthened
Recommendation 6 : The communication and information on work of inspectors towards Inspection council should be more efficient in term of regularity and content
Recommendation 7 : The Inspection council should have capacity to monitor the work of inspectors through a Monitoring Information System (MIS) based on daily performance of inspectors work.
Recommendation 8 : The Monitoring Information (MIS) should include a complaints’ management system.
Recommendation 9 : The work of inspectors should be more transparent and public available.
Recommendation 10 : To establish a single information system for inspections - E-inspector
Recommendation 11 : The system of Accredited laboratories and other bodies involved in sampling used for inspection supervision should be strengthened in financial and technical terms.
Recommendation 12 : Risks itself, the risk management strategy and the risk-based enforcement approach are communicated to stakeholders clearly and actively.
Recommendation 13 : A comprehensive structured system of inspection agencies and their authorization .should be easily available for the public, with information setting out clearly who controls which sectors and issues. This is essential for the public to demand accountability by contesting the work of the state or municipal bodies and other subjects by inspector supervision.
Recommendation 14 : Linked to recommendation 13, Possibilities for trusted, semi-anonymous complaints in favor of public interest against abuse need to be present. Citizens, consumers, workers and other stakeholders should have well-publicized, simple to use possibilities to file complaints against regulated subjects and know how they are handled. To consider a method used to measure the level of satisfaction by including the measurement of trust from

stakeholders in general, as well as the satisfaction and trust among inspected subjects.
Recommendation 15 : Data on appeals and complaints should be used as an element to assess and improve inspection's practices in terms of professionalism, compliance promotion, amongst others.
Recommendation 16 : Inspections should not be influenced by political priorities as scarce resources should be focused on reducing risk and not politically motivated to win votes which could also lead to accusations of corruption. A mechanism to reduce risk on pressure on Inspectors should be strong and confidential.
Recommendation 17 : All inspection authorities should be supported by cross-sectoral strategies in place and implement them to support ethical decisions, prevent conflicts of interest and make professional judgements about disclosure and when it is appropriate.