

ANALYSIS OF DISCRETIONARY POWERS IN THE HEALTH SECTOR



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This publication was prepared by the USAID Partnership Against Corruption Activity team with support from the American people through the United States Agency for International Development (USAID). The analysis was conducted by the Centre for Change Management. The contents of this publication do not necessarily reflect the views of USAID or the United States Government.

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EXECUTIVE SUMMARY

This analysis was prepared as part of the "Partnership Against Corruption" Project financed by USAID. It is a part of Goal 1, which focuses on strengthening the capacities, integrity, and accountability of the public sector to protect against corruption.

Discretionary powers and how they are regulated in the legislation of the Republic of North Macedonia have been identified as one of the greatest risks for corruption in the public sector. Specifically, laws allow for broad discretionary powers in decision-making processes relating to various procedures. These powers are most often regulated by unclear and incomplete legal norms, leaving room for different interpretations, bringing thus inconsistency in their application, legal uncertainty, and opportunities for corrupt influences on decision-making processes.

In the health sector, discretionary powers are exercised in procedures for appointing and dismissing management and leadership structures, procedures for employment of health workers, and decision-making upon requests for the exercise of rights related to the performance of healthcare activities. The way discretionary powers are used impacts the management of institutions, the organization of their work, but also the quality of services delivered to citizens.

To conduct this research, an analysis of the legal framework regulating discretionary powers in the health sector was performed. This included a review of strategic documents from relevant institutions that highlight abuses in the exercise of discretionary powers and a discussion with a focus group involving employees from public health institutions.

The findings from the analysis indicate numerous inconsistencies in the exercise of discretionary powers in the health sector and opportunities for corrupt practices in decision-making. Discretionary powers and potential risks of their abuse are particularly recognized in provisions for:

- The appointment and dismissal of directors of public health institutions, the Health Insurance Fund, and the Agency for Medicines and Medical Devices, and the appointment and dismissal of members of management boards at these institutions.
- Decision-making on the allocation of specializations and sub-specializations for health workers.
- The method of appointing and dismissing members of commissions that decide on the exercise of health insurance rights and the way in which the amount of remuneration is determined.

- The appointment of members of commissions that decide in procedures under the mandate of the MALMED and the remuneration for members of the commissions.

The analysis showed that the legislative and secondary legislative documents do not prescribe criteria and procedures for the appointment of management and leadership structures in public health institutions nor criteria and procedures for the appointment of commission members and the determination of the amount of pecuniary remuneration.

The recommendations resulting from the analysis to overcome the identified deficiencies in laws and secondary legislation include improving the laws and secondary legislative documents by adopting:

- Appropriate legal amendments and supplements, and
- Developing documents (guidelines, instructions) that will prescribe precise criteria and procedures for the selection and dismissal of management and leadership structures in the public health sector, criteria for the composition of commissions, and the allocation of specializations and sub-specializations.

The implementation of recommendations will result in limiting discretionary powers in decision-making processes in the health sector, increasing transparency in decision-making, providing thorough explanations of decisions, and their public announcement. This on its part will contribute to reducing the risks of corruption and, consequently, to better management of health institutions, better organization of their work, and ultimately to the delivery of higher quality health services to citizens.

1. INTRODUCTION

Discretionary powers in the Republic of North Macedonia are widespread. However, their inconsistent application causes legal uncertainty in deciding upon rights, obligations, and legal interests of citizens. The Law on Prevention of Corruption and Conflict of Interest (LPCCI) in Article 8, which defines the term "risk of corruption," also includes discretionary powers.

The Law on General Administrative Procedure (LGAP)¹ and the Law on Administrative Disputes (LAD)² use the synonym "free assessment" to designate discretionary powers. Under the principle of legality, the LGAP prescribes that if a public authority is authorized by law to decide based on free assessment, the administrative act should be adopted within the limits of the law that grants such authorization, in accordance with the purpose for which the authorization is given, and must be particularly reasoned (Article 5, paragraph 3, LGAP). The legality of the actions of public sector institutions is also a constitutional principle set forth in Article 51 of the Constitution of the Republic of North Macedonia, according to which " laws shall be in accordance with the Constitution and all other regulations in accordance with the Constitution and law. "³

Discretionary powers can be "explicit," meaning laws expressly stipulate the right of institutions to decide freely. They can also be "implicit," arising from broad and unclear legal provisions the deficiencies of which give institutions the right to decide freely and thus fill legal gaps. However, in both cases, institutions must act in accordance with the principles of the LGAP. Even in the case of implicit discretionary powers, institutions must act as much as possible in accordance with the rules and principles of the LGAP. This Law sets the minimum threshold for ensuring legality of actions of institutions and protecting the rights of citizens and therefore the same Law should ensure uniformity in the actions of institutions, have the unifying purpose. This means that with special laws, certain matters can be regulated differently from this Law if relevant legal provisions are not contrary to the basic principles and purpose of this Law and do not reduce the protection of the rights and legal interests of the parties guaranteed by this Law (Article 2, paragraph 2, LGAP).

However, in practice, the application of discretionary powers is constantly the subject of public debate, especially due to the inappropriate application of this power by the management structures of institutions, the possibility of political influences, deepening thus the corruption risks. The existence of mechanisms to control the application of discretionary powers is a guarantee of legal security for natural and legal persons. The modalities applying which discretionary powers can be limited and better regulated are the subject of discussion by regional/European organizations such as the Council of Europe (CoE), which in its recommendation CM/Rec(2007)7 emphasizes that the essence of so-called "bad administration" is the existence of deficiencies in administrative procedures, i.e., the absence of clear deadlines,

¹ Law on General Administrative Procedure (LGAP), Official Gazette No. 124, 23 July 2015
https://aa.mk/content/zakon_za_opstata_upravna_postapka.pdf

² Law on Administrative Disputes (LAD), Official Gazette No. 96, 17 May 2019,
<https://healthrights.mk/pdf/Zakoni/2019/08.2019/Zakon%20za%20upravni%20sporovi%20SV%2096-219.pdf>

³ Constitution of the Republic of North Macedonia <https://www.sobranie.mk/ustav-na-rm.nspj>

criteria, steps, clear systems, and procedures, etc.⁴ Thus, it can be concluded that regulating discretionary powers is one of the fundamental prerequisites for establishing strong and democratic public sector institutions. The Charter of Fundamental Rights of the European Union (EU) elevates good administration of public sector institutions to the level of a human right - the right to good administration, as defined under Article 41 of the Charter.⁵ This right, i.e., this article, in its item (c) prescribes that "the administration's obligation is to provide reasoning for its decisions," which is complementary to the above mentioned provisions of the LGAP and the LAD.

When it comes to the health sector, the problem of corruption in this area is also recognized under the National Strategy for Prevention of Corruption and Conflict of Interests 2021 – 2025.⁶ Specifically, in relation to the health sector, the National Strategy identifies five problems, while the Action Plan of the Strategy includes 18 measures and 26 activities to overcome such problems, making this sector second in the total number of problems, measures, and activities (the education sector is first), indicating the large number of corruption risks in the health sector. All five problems⁷ in the health sector are related to the lack of criteria and potential abuse of discretionary powers.

Under the Qualitative Analysis of Vulnerable Sectors identified by the National Strategy for the Prevention of Corruption and Conflict of Interests 2021 – 2025,⁸ conducted by the State Commission for the Prevention of Corruption (SCPC) within the IPA project "Promoting Transparency and Accountability in the Public Administration in North Macedonia," the health sector is again noted as one of the most at-risk sectors from the aspect of corruption. The analysis, i.e. assessment indicates that out of a total of 100 points, the health sector was awarded only 20 points, primarily due to the existence of a systemic legal framework for public procurement, transparency, and protection of whistleblowers, and the low percentage of citizens asked for bribes to receive health services. However, implementation in this area is very weak, meaning that apart from public procurement, public health institutions do not comply with any other legal obligations. Zero points have been granted under the implementation of the strategy section, because no activity has been implemented.

The appointment and assignment of management structures in public health institutions are not specifically addressed in the National Strategy for the Prevention of Corruption but fall within the horizontal area of employment, which is noted as a weakness in all sectors (health, education, public enterprises, state administration bodies, etc.). Generally, the legislation grants significant discretion in the appointment and assignment of management structures in all public sector institutions, including public health institutions, which therefore will be part of this analysis. In fact, corruption risks that exist in the health sector in terms of abuse of discretionary powers are multiplied when the person responsible for the institution's legality, such as the director or their deputy or members of management boards, is appointed discretionally. If individuals are appointed or assigned to such positions without applying any criteria and without such individuals having basic qualifications, the risk of abuse of all the powers and responsibilities these individuals have is much greater.

⁴ Recommendation CM/Rec (2007)7 of the Committee of Ministers to member states on good administration, Council of Europe, [Microsoft Word - CMRec 2007_7 version A5.doc \(coe.int\)](#)

⁵ Charter of Fundamental Rights of the EU, 26 December 2012, (in the English language) <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:12012P/TXT>

⁶ <https://dksk.mk/wp-content/uploads/2021/01/Nacionalna-strategija-DKSK-KONECNA.pdf>

⁷ A review of the issues is given in Part 3 - Analysis of Strategic Documents and Reports

⁸ https://dksk.mk/wp-content/uploads/2022/06/АНАЛИЗА_ДКСК.pdf

Available strategic documents show that in the health sector, the application of discretionary powers is quite widespread. Discretionary decisions are made with respect to various issues, such as the appointment and dismissal of directors and management board members of public health institutions (PHI), the employment of health workers and associates, but also in the implementation of procedures for issuing approval, i.e., marketing permissions for medicines, approving specializations and sub-specializations, and decisions on the exercise of rights arising from health insurance. However, it remains unclear how and according to which criteria commissions are formed, which make the decisions in these procedures. Applicable legal solutions do not establish a procedure and objective criteria for appointing commission members who make decisions in the mentioned procedures, and these commissions are formed based on the discretionary power of the head of the institution.

This analysis was conducted as part of the efforts to reduce opportunities for corruption through the management of discretionary powers at the highest and middle management levels and senior public officials under the "Partnership Against Corruption" Project financially supported by USAID.

The project aims to strengthen national-level systems to reduce institutional vulnerability to corruption by identifying priorities and, together with the government and other anti-corruption entities, taking actions to address corruption when it arises.

The project adopts an approach of engaging with accountability institutions at the central level, as well as with specific sectors. In the first year, the focus is on two sectors, one of which is the health sector.

2. METHODOLOGY

The methodological approach applied in conducting the research and in preparing the Report includes the following:

- Analysis of the state of play through the examination of strategic documents on the fight against corruption and conflict of interest, as well as reports of in-line institutions indicating the abuse of discretionary powers;
- Analysis of the legislative and secondary legislative framework governing discretionary powers in the health sector;
- Discussions within a focus group on the exercise of discretionary powers in the health sector, with the participation of employees in this sector.

Data was requested from relevant institutions: the State Commission for the Prevention of Corruption (SCPC), the Ombudsman, and the State Commission for Decision-Making in Administrative Procedure and Employment Relations in the Second Instance regarding submitted complaints alleging irregularities and abuses in the exercise of discretionary powers by the leadership of the institutions in the performance of their official duties.

Within the scope of the research, discretionary powers in the health sector, granted to institutions by law, were mapped. Based on this, an assessment of their nature, i.e., whether they are explicit or implicit, was conducted with a view to proposing recommendations for better regulation of such powers.

In conducting this analysis, methodologies for anti-corruption legislative analysis, specifically the methodology issued by the SCPC⁹ and the methodology issued by the Regional Anti-Corruption Initiative (RAI),¹⁰ were consulted.

⁹ Methodology for Anti-Corruption Legislative Review, SCPC, 2020, <https://shorturl.at/nruLN>

¹⁰ Corruption Proofing of Legislation (CPL) Monitoring and Evaluation Methodology, RAI, 2023 https://rai-see.org/php_sets/uploads/2024/03/Methodology-CPL-final.pdf

3. STATE OF PLAY ANALYSIS

Public sector institutions must exercise discretionary powers in accordance with rules and principles stipulated under the Law on General Administrative Procedure (LGAP), both in cases where a specific procedure is prescribed by a special law and in the absence of such a procedure. Therefore, the assessment of the manner in which discretionary powers are exercised can be done by evaluating the compliance of the procedure with the rules and principles set forth in the LGAP.

Correct application of discretionary powers occurs when a procedure is conducted under which the substantive truth (factual situation) is well established, the specific administrative act (decision, resolution, etc.) has an introductory clause that clearly and precisely states the legal basis and a reasoning that describes in detail why the authority acted in a given way.

Incorrect application of discretionary powers can result from an omission in the administrative procedure, done by the responsible person at the public authority, who incorrectly establishes the substantive truth (factual situation), leading the applicant to use legal remedies.

However, **abuse of discretionary powers** occurs when objective circumstances clearly indicate that the decision excessively exceeds the purpose for which the right to decide freely has been granted. This means that the specific administrative act is not particularly or at all reasoned, and there are reasonable suspicions, or it is potentially established that the party in whose favor the decision has been made (by which legal authorities have been overstepped the legal/discretionary power) is in a direct or indirect (political, familial, friendly, or business) relationship with the responsible person at the authority. In this case, there is an abuse of authority and official position for corrupt purposes, i.e., an overlapping of interests. This applies to both explicit and implicit discretionary powers.

The issue of the (mis)use of discretionary powers in the health sector is identified in the **National Strategy for the Prevention of Corruption and Conflict of Interest 2021-2025, in which the major problems in the health sector are identified as follows:**

1. The lack of effective criteria for determining contractual compensation (limits/budgets) for health institutions, both public health institutions (PuHIs) and private health institutions (PrHIs), and for the prices of health services and medications, nor criteria for the transparent determination and distribution of the budget intended for health institutions, new technologies, and medications, and methods for provision of health services;
2. Subjectivism in the selection of medications covered by public funds, i.e., from citizens' health insurance contributions, and the inconsistent application of evidence-based medicine regulations;
3. Abuses in the procedures for giving/receiving donations, clinical studies, and projects;

4. Unethical practices in the marketing of medications; and
5. Non-transparent and subjective decision-making in the process of granting funds for medical treatment abroad.

The absence of criteria for determining contractual compensations (limits/budgets) for health institutions (PuHIs and PrHIs) and for the prices of health services and medications, or the absence of criteria for the transparent determination and distribution of the budget intended for health institutions, new technologies, and medications, and methods for health services, allows discretion to the entity distributing the funds, which is the Health Insurance Fund.

Subjectivism in the selection of medications covered by public funds, i.e., from citizens' health insurance contributions, is also a result of discretionary powers due to the insufficient functionality of the applicable legal regulations.

Abuses in the procedures for giving/receiving donations, clinical studies, and projects are also the result of the absence of clear criteria and, above all, precise procedures, which again lead to free assessment and discretion of the persons deciding on the receipt of these donations, studies, and projects.

According to the National Strategy for the Prevention of Corruption, unethical practices in the marketing of medications are the result of weak regulatory mechanisms in this domain, especially in the domain of legal punishments, which is why corrupt practices have been observed, in the form of direct and indirect payments to doctors and pharmacists for prescribing medications by given pharmaceutical companies. This, apart from illegally acquiring material benefits, exposes the state budget and household budgets of the users of medications to irrational costs. All this allows discretion in deciding which medications would be used in the hospital itself, which is not based on medical and economic parameters, but on the free assessment of doctors and responsible people.

As it can be seen from the above stated, the State Commission for the Prevention of Corruption connects all corruption risks in the health sector, directly or indirectly, with the lack of criteria and procedures, weak regulatory mechanisms, and subjectivism of official persons performing their official duties, which all forms the basis for discretionary actions and decision-making.

An additional horizontal problem in all areas of the public sector, including health, is the possibility of discretionary appointments and designation of management structures, i.e., directors, deputy directors, as well as members of management and supervisory boards. Like the other problems in the health sector, this problem with the (mis)use of discretionary powers in the procedures for the appointment and assigning of management structures has also been identified by the State Commission for the Prevention of Corruption (SCPC) and in this context, the *National Strategy for the Prevention of Corruption and Conflict of Interest 2021-2025*,¹¹ among others, defines the following strategic goal- "Ensuring integrity and transparency in employment and human resources policies in the public sector, based on a system of values and quality criteria. The attainment of this goal will also mean establishing a clear and transparent process for evaluating the criteria for employment and promotions in public sector institutions, including public health institutions, and limiting discretionary powers of the responsible person in the process of employment at public health institutions."

¹¹ National Strategy for the Prevention of Corruption and Conflict of Interest 2021-2025 <https://dksk.mk/wp-content/uploads/2021/01/Nacionalna-strategija-DKSK-KONECNA.pdf>

The implementation of these measures should contribute to the consistent implementation of all prescribed procedures in the employment process, to include as many measurable criteria as possible for the assessment of candidates in the selection procedure, to reduce discretionary powers, and to make the procedure completely transparent. However, regarding the implementation of these measures, in the Annual Report on the work of the SCPC for 2022,¹² it is stated that:

*“The implementation of activities planned under the National Strategy 2021-2025 for 2022, as well as activities that were not realized or were initiated in 2021 and carried over for implementation in 2022, is very low and stands at 10%. As a result, **in 2022, no significant changes were registered in the legal regulations, and the misuse of legal provisions due to imprecise or unclear stipulations was not reduced. Consequently, influences based on party, familial, and friendly relationships remained dominant in the sphere of public sector employment.**”*

The Ombudsman has long expressed concerns regarding the discretionary powers of the public administration in various segments (such as regulatory bodies, security institutions, employment procedures, and others). Since the publication of annual reports in 2007, it has been observed that the Ombudsman noted the misuse of discretionary powers by the Health Insurance Fund,¹³ and later in 2011 and 2012, the Ombudsman highlighted discretionary powers in the education sector.^{14,15} As early as 2017, the Ombudsman alarmed about the need to prevent the misuse of discretionary rights by responsible individuals,¹⁶ and in 2019, the Ombudsman noted that there were no significant changes in preventing the misuse of discretionary rights by responsible persons.¹⁷ In 2021, the Ombudsman called for greater transparency in decision-making, which falls under the discretionary rights of concerned authorities in the educational process,¹⁸ but this recommendation is applicable to all sectors of the public administration as they operate under the same rules and principles of the administrative procedure.

In the Ombudsman's Report for 2022,¹⁹ it is emphasized that complaints were received from employees in public health institutions whose requests to the Minister of Health for the extension of their employment contracts were denied. This pointed to the selective application, by the Minister of Health, of Article 204-a, paragraph (2) of the Law on Health Protection, resulting in the issuance of decisions to terminate their employment.

It must be particularly noted that the complainants often allege that such actions by employers in employment procedures are a result of political influence, or, as in the case of procedures for the approval of specializations and sub-specializations, the achievement of higher results by candidates is not considered or applied as a criterion.²⁰

¹² <https://dsk.mk/wp-content/uploads/2023/03/GI-2022-%D0%BA%D0%BE%D0%BD%D0%B5%D1%87%D0%B5%D0%BD.pdf>

¹³ Annual Report of the Ombudsman, 2007, p. 76 <https://shorturl.at/fizX2>

¹⁴ Annual Report of the Ombudsman, 2011, p. 104 <https://shorturl.at/biRSY>

¹⁵ Annual Report of the Ombudsman, 2012, p. 105 <https://shorturl.at/iilMQ>

¹⁶ Annual Report of the Ombudsman, 2017, p. 55 <https://shorturl.at/IEOZ9>

¹⁷ Annual Report of the Ombudsman, 2019, p. 48 <https://rb.gv/2eyocf>

¹⁸ Annual Report of the Ombudsman, 2021, p. 91 <https://rb.gv/oepdc6>

¹⁹ <https://ombudsman.mk/CMS/Upload/NarodenPravobranitel/upload/Godisni%20izvestai/GI-2022/GI-2022.pdf>

²⁰ The ambiguity of Article 204-a of the Law on Health Protection, and as a result, the opportunities for the abuse of discretionary power, are highlighted in the analysis of the legal framework of this Report.

The Ombudsman specifically addresses a particular complaint submitted by candidates who applied for sub-specialization in a certain public health institution. According to the complaint allegation, the top-ranked and third-ranked candidates on the points-based ranking list were not accepted, while the second, fifth, seventh, and ninth-ranked candidates were accepted. Furthermore, the Ombudsman requested the employer to clarify the criteria based on which the selection of candidates for sub-specialization was made, given that, according to the allegations in the complaint and the submitted evidence, sub-specialization was approved for candidates with significantly lower points on the established ranking list. Such cases represent a classic example of the abuse of discretionary powers.

The Ombudsman reports on the progress of this case in the Annual Report for 2023²¹ as well. In response to the request, the specific public health institution did not specify the criteria based on which the selection of candidates for sub-specialization was made. Consequently, the Ombudsman was informed that the candidates were sent for sub-specialization based on the institution's assessment of their suitability and the optimal utilization of their health services. Dissatisfied with the response and in accordance with his legal competencies, the Ombudsman continued the procedure and submitted Information to the Government of the Republic of North Macedonia, emphasizing that such an explanation and stance of the public health institution were unacceptable. The Ombudsman pointed out that healthcare is one of the most sensitive areas due to the nature of its work, and special care must be taken in selecting candidates for employment and further professional development (specializations and sub-specializations). The Ombudsman particularly stressed that:

"The selection should be limited to the most qualified personnel with the highest demonstrated results and the highest scores on the ranking list, which should be applied as a criterion without exception. Otherwise, through the inappropriate application of discretionary powers, employers select candidates who are not the most qualified at the time, at the expense of those who possess high professional capabilities but are not selected due to this manner of selection."

Responding to this issue, the Government of the Republic of North Macedonia requested an explanation from the Ministry of Health, and the response received was that the observations regarding more precise legal criteria for selection in the procedure for sending candidates for specializations and sub-specializations from public health institutions following an internal announcement would be taken into consideration during the drafting of amendments to the Law on Health Protection. However, amendments to the Law aimed at refining and specifying the criteria for awarding specializations and sub-specializations have yet to be adopted.

²¹ <https://ombudsman.mk/CMS/Upload/NarodenPravobranitel/upload/Godisni%20izvestai/GI-2023/GI-2023.pdf>

4. LEGAL FRAMEWORK ANALYSIS- ESTABLISHED DEFICIENCIES AND HOW TO OVERCOME THEM?

Discretionary powers in the health sector of the Republic of North Macedonia arise from applicable legal provisions in this domain. By reviewing the legal framework in the field of healthcare, discretionary powers of the management structures in the health sector can be mapped and legal gaps can be identified and highlighted, specifically those leaving room for the improper exercise of these powers, then for political influence, and corrupt behavior in all procedures under which decisions are adopted based on discretionary decision making. To this end, within the scope of the analysis, the provisions of all laws identified as problematic from the aspect of corruption according to the National Strategy for the Prevention of Corruption were meticulously reviewed. These include:

- The Law on Health Protection,
- The Law on Health Insurance,
- The Law on Medicines and Medical Devices, and
- Secondary legislation arising from the said laws.

A series of decisions published in the Official Gazette of the Republic of North Macedonia and decisions obtained based on requests for free access to public information, which appoint and dismiss management structures in public health institutions, were also reviewed from the aspect of the exercise of discretionary powers in making these decisions.

Discretionary powers in the health sector are exercised in various procedures and in different ways. The analysis encompasses opportunities for the execution of these powers in:

- The appointment and dismissal of directors and members of management boards in the healthcare sector;
- The appointment and dismissal of members of commissions that decide on health insurance rights and commissions that conduct procedures related to the classification, approval for market placement, and testing of medicines and medical devices;
- Decision-making regarding the exercise of rights related to the performance of healthcare activities (work licenses, employment rights, granting of specializations, and sub-specializations).

4.1. APPOINTMENT AND DISMISSAL OF MANAGEMENT AND ADMINISTRATIVE STRUCTURES IN THE HEALTH SECTOR

The Law on Health Protection (LHP), the Law on Health Insurance, and the Law on Medicines and Medical Devices (LMPMD) contain provisions governing the appointment and dismissal of directors and members of management boards at public health institutions (PHI), the Agency for Medicines and Medical Equipment (MALMED), and the Health Insurance Fund of the Republic of North Macedonia (HIFRNM).

Below is a summary of these legal provisions, specifically how the laws regulate procedures for appointing and dismissing management and administrative structures in the health sector, the present ambiguities, and the risk of corrupt behavior in the exercise of discretionary powers in the said appointment and dismissal procedures.

Article 104 of the Law on Health Protection defines the conditions for appointing a director of a public health institution. Thus, a person may be appointed as a director of a PHI if they:

- 1) Are a national of the Republic of Macedonia;
- 2) At the time of appointment, have not been issued a final judicial sentence or misdemeanor sanction prohibiting the performance of a profession, activity, or duty;
- 3) Have completed higher education in the fields of medicine, dentistry, or pharmaceutical sciences, higher education as a graduate speech therapist, higher education as a specialist in medical biochemistry, higher education in economic or legal sciences, or public health management with at least 240 ECTS, or at least level VI A according to the National Framework of Higher Education Qualifications;
- 4) Have a minimum of five years of work experience in a health institution, or in the fields of economy, finance, law, or management, or in the system and organization of health protection and health insurance (if it concerns an economic director);
- 5) Offer the highest quality program for the operation of the public health institution; and
- 6) Possess an internationally recognized certificate or attestation of active proficiency in the English language not older than five years.

By exception, in public health institutions such as health centers with over 1,000 employees, university clinical centers, university clinics, clinical hospitals, university institutes, and institutes, the Law prescribes dual management in such a way that these PHIs appoint two directors, an organizational director and a medical director, who are responsible for the operation of the public health institution and for the obligations assumed in legal transactions in accordance with the mandate established by this or other laws, secondary legislation, and the managerial contract (Article 105).

A PERSON MAY BE APPOINTED AS A MEDICAL DIRECTOR IF THEY FULFIL THE FOLLOWING CONDITIONS:

1. Are a national of the Republic of Macedonia;
2. At the time of appointment, have not been issued a final judicial sentence or misdemeanor sanction prohibiting the performance of a profession, activity, or duty;
3. Have completed higher education in the fields of medicine, dentistry, or pharmaceutical sciences, higher education as a graduate speech therapist, higher education as a specialist in medical biochemistry with at least 240 ECTS, or at least level VI A according to the National Framework of Higher Education Qualifications;
4. Have a minimum of five years of work experience in a health institution;
5. Possess one of the following internationally recognized certificates or attestations for active proficiency in the English language not older than five years:
 - TOEFL IBT with a minimum score of 74,
 - IELTS with a minimum score of 6,
 - ILEC (Cambridge English: Legal) with a minimum level of B2,
 - FCE (Cambridge English: First) – passed,
 - BULATS with a minimum score of 60, and
 - APTIS with a minimum level of B2.

A PERSON MAY BE APPOINTED AS AN ORGANIZATIONAL DIRECTOR IF THEY FULFIL THE FOLLOWING CONDITIONS:

1. Are a national of the Republic of Macedonia;
2. At the time of appointment, have not been issued a final judicial sentence or misdemeanor sanction prohibiting the performance of a profession, activity, or duty;
3. Have completed higher education in economic or legal sciences or public health management or completed academic studies with at least 240 ECTS, or at least level VI B according to the National Framework of Higher Education Qualifications;
4. Have a minimum of five years of work experience in economy, finance, law, or management, or in the system and organization of health protection and health insurance;
5. Possess one of the following internationally recognized certificates or attestations for active proficiency in the English language not older than five years:
 - TOEFL IBT with a minimum score of 74,
 - IELTS with a minimum score of 6,
 - ILEC (Cambridge English: Legal) with a minimum level of B2,
 - FCE (Cambridge English: First) – passed,
 - BULATS with a minimum score of 60, and
 - APTIS with a minimum level of B2.

The Law prescribes (Article 107) that a director of a PHI is appointed based on a public competition announced by the management board of the public health institution, with the director being appointed or dismissed by the Minister of Health. The procedure for appointing a director is also regulated under the Law (Article 108), which defines the deadline for announcing the advertisement, the content of the advertisement, the deadline for appointing the director by

the Minister, after receiving the proposal from the Management Board, as well as the possibility of appointing an acting director.

In addition to defining the conditions that candidates for the director position must fulfil, concerning the type of education, required work experience, and proficiency in foreign languages, one of the conditions the Law stipulates for candidates is "to offer the highest quality program for the operation of the public health institution." However, the Law does not specify how and according to which criteria the quality of the offered program is assessed. Therefore, in the case of multiple candidates who equally fulfil the conditions and have submitted a program, the Minister has the discretion to decide which candidate will be appointed as director. The decisions for appointing and dismissing directors of public health institutions do not contain reasonings, explaining reasons why one candidate was chosen, then decisions do not refer to minutes indicating that a selection procedure was conducted, nor do they state whether and how the quality of each candidate's program was evaluated.

This manner of appointing and dismissing directors of PHIs represents an inadequate application of the discretionary power of the Minister of Health, which leaves room for suspicion that changes of directors can be politically motivated.

The procedure for selecting/appointing members of a Management Board in a public health institution, as currently regulated, is also unclear and imprecise. The Law (Article 100, paragraph 2) prescribes that the Management Board of public health institutions providing specialist-consultative and hospital health care consists of five members, two of whom are representatives from among the professional and competent staff in the public health institution selected by the professional body and three representatives of the founder.²² Furthermore, the Law (Article 101) stipulates that a person with at least a higher education and a minimum of five years of work experience in health, economy, or law may be appointed as a member of a Management Board.

However, the Law does not prescribe criteria or procedures for appointing members of a Management Board. By exercising the discretionary power granted under the Law on Health Protection, the Government may adopt a decision, without any previous procedure, and thus appoint and dismiss members of management boards in public health institutions.

The analysis included several such decisions made in 2022 and 2023.²³ The conclusion that can be drawn is that these documents do not contain explanations about the reasons why a person is appointed or dismissed from the position of a member of the management board in a specific public health institution, and in many cases, the same involves concurrently dismissal and appointment of the same person as a member of a Management Board.

²² The Government or the Council of the Municipality.

²³ <https://www.slvesnik.com.mk/Issues/80235bb4364e4673b8f363cf52dcc2d3.pdf>
<https://www.slvesnik.com.mk/Issues/80235bb4364e4673b8f363cf52dcc2d3.pdf>
<https://www.slvesnik.com.mk/Issues/80235bb4364e4673b8f363cf52dcc2d3.pdf>
<https://www.slvesnik.com.mk/Issues/790ff1b7ccbb447e9b96d2aa9039829e.pdf>
<https://www.slvesnik.com.mk/Issues/eafc714955ee4f1482df67582961af16.pdf>
<https://www.slvesnik.com.mk/Issues/ae1e3f20943d45a685384365e9c4c436.pdf>
<https://www.slvesnik.com.mk/Issues/d46e10e1fe67483fbc20b568acf2e65f.pdf>

Additionally, such decisions do not explicitly contain instructions for legal remedy (which is a constitutionally guaranteed right to legal protection and a mandatory element of administrative acts), but such decisions can still be challenged in an administrative dispute in accordance with Article 3, paragraph 5 of the Law on Administrative Disputes (LAP).²⁴ This method does not allow for competitiveness and a real contest in the appointment of members of Management Boards.

This method of appointing and dismissing members of management bodies in public health institutions, without procedure, without criteria, and without reasoning, affects the quality of management of public health institutions and ultimately impacts the quality of health services provided to end users - citizens.

According to the Law on Health Insurance (LHI), the director of the Health Insurance Fund of the Republic of North Macedonia (HIFRNM) is appointed and dismissed by the Government of the Republic of North Macedonia on the proposal of the Minister of Health.

The Law (Article 57) prescribes the criteria for selecting the director of the Fund, stating that the appointment is made by the Government after a public competition, based on a proposal by the Ministry of Health.

However, the Law does not specify how and according to which criteria the Ministry of Health makes the selection of the candidate. This omission leaves wide discretion to the Minister of Health and the possibility of misuse, allowing the Minister of Health to appoint a candidate who may not be the best among those who applied for the public competition.

The Statute of the Health Insurance Fund also regulates (among other things²⁵) the procedure for selecting and dismissing the director of the Fund, aiming to further clarify the said procedure. However, it still does not define precise and objective criteria for selecting the director of the HIFRNM. On the other hand, the Statute itself can contain discretionary powers concerning the functioning of HIFRNM.

The composition of the Management Board (MB) of the Health Insurance Fund is prescribed in Article 55 of the Law on Health Insurance. Specifically, it determines the authorized proposers of members and contains a greatly general provision regarding the qualifications of the members. In this context, the Law stipulates that members of the Management Board are to be proposed from among individuals who possess higher education and work experience in financial operations or in the system and organization of health protection and health insurance, emphasizing the need to ensure equitable representation of citizens belonging to all communities.

According to the Law (Article 55, Paragraph 2), the Management Board includes one representative from each of the following institutions:

²⁴ According to which an administrative dispute may be instituted against the legality of final individual acts deciding on the election, appointment, and dismissal of holders of public offices adopted by the Parliament of the Republic of Macedonia, the President of the Republic of Macedonia, the Government of the Republic of Macedonia, the bodies of state administration, organizations established by law, other state bodies, as well as bodies of units of local self-government.

²⁵ - the organization and the manner of operation of the Fund;
 - the rights, obligations, and responsibilities of the bodies of the Fund;
 - the presenting and representing the Fund;
 - transparency in the operation of the Fund and its bodies;
 - other matters of significance for the operation of the Fund.

- Ministry of Health
- Ministry of Economy
- Federation of Trade Unions of Macedonia
- Chambers of Commerce of the Republic of North Macedonia
- Medical Chamber of Macedonia
- Dentistry Chamber of Macedonia
- Pharmaceutical Chamber of Macedonia
- Association of Pensioners
- Association of Consumers

However, this general provision allows for a broad interpretation, thereby presenting the risk of appointing individuals with as little as one year of work experience, as this criterion is not specified. Additionally, the specific type of education, according to the Frascati classification, required for being a member of a Management Board is not defined.

According to the Law (Article 55, paragraph 3), the Management Board has a Chair and a Vice-Chair, who are appointed exclusively from among the representatives of the Ministry of Health and the Ministry of Finance, alternating annually during their term of office. There is no provision allowing for the appointment as the Chair and Vice-Chair of the Management Board of persons from among the professional bodies that are members of the Board.

The Agency for Medicines Products and Medical Equipment (MALMED) is responsible for conducting procedures **for** classification, issuance of marketing authorizations, and testing of medicines and medical devices. This mandate of the Agency is founded on the Law on Medicines and Medical Devices (LMPMD).

The director of the Agency is appointed and dismissed by the Government of the Republic of North Macedonia, following a previously announced public advertisement (Article 4). The Law, in Article 4a, also prescribes the conditions that a candidate for director of MALMED must fulfil. However, the Law does not specify the exact procedure for the selection of the director, nor the criteria by which the director is selected. Additionally, the Law does not require the issuance of an individual act before the publication of the decision in the Official Gazette of the Republic of North Macedonia. This leaves the discretionary power to the Government to appoint the director of the Agency, thus increasing the risks of corruption in the decision-making process on the selection.

4.1.1 FINDINGS AND RECOMMENDATIONS

The following are the key findings established under the analysis of legal provisions governing the appointment and dismissal of leadership and managerial structures within the health sector:

- The Law on Health Protection does not regulate the criteria, nor does it regulate a transparent, competitive, and merit-based procedure for the selection and dismissal of a director of a public health institution (PHI) and the selection and dismissal of members of a management board of a PHI.
- The lack of clear criteria and a merit-based procedure for the selection of directors, as well as members of the management boards of public health institutions, allows for the appointment and designation of individuals to these positions based on political, familial, personal, and other types of influences;
- The Law on Health Insurance does not regulate the criteria, nor does it prescribe a transparent, competitive, and merit-based procedure for the selection and dismissal of directors of the Health Insurance Fund of the Republic of North Macedonia (HIFRNM), as well as members of the management board of the Fund.
- In relation to the appointment and dismissal of the director of the Agency for Medicines and Medical Equipment (MALMED), it can be concluded that the law defines the conditions, but not the procedure and criteria for selection, i.e., appointment and dismissal. The Government appoints and dismisses the director based on discretionary power.

To overcome identified weaknesses and with the aim of limiting discretionary powers in the appointment of the leadership and management structures of both public health institutions and at the MALMED and the Health Insurance Fund of the Republic of North Macedonia (HIFRNM), the following is recommended:

- It is necessary to adopt relevant amendments and supplements to the Law on Health Protection in order to establish objective criteria for the selection of directors and members of management boards in public health institutions.
- Until appropriate legal solutions are adopted to address these deficiencies, it is recommended that the Ministry of Health prepare and adopt a Manual and training for a fair, transparent, and open procedure for appointments to leadership positions in public health institutions. This manual would contain guidelines on how and according to what criteria to conduct the selection process, the interview, the evaluation of the work program submitted by the candidate, as well as guidelines on how the decision on selection should be drafted and its content (explanation and reasoning).

- By adopting amendments and supplements to the Law on Health Insurance, criteria should be established, and a transparent, competitive, and merit-based procedure prescribed for the selection and dismissal of directors of the Health Insurance Fund of the Republic of North Macedonia (HIFRNM) as well as members of the management board of the Fund.
- Until the amendments and supplements to the Law on Health Insurance are adopted, it is recommended that the Ministry of Health issue a secondary legislation document or guideline/order that prescribe criteria, as well as a transparent, competitive, and merit-based procedure for the selection and dismissal of the director of the HIFRNM, as well as members of the management board of the Fund, and mandate the Fund to transpose these rules into its Statute.
- Amendments and supplements to the Law on Medicines and Medical Devices are necessary to regulate a transparent, competitive, and merit-based procedure for the selection of the director of the Agency for Medicines and Medical Equipment;
- Adoption of a Methodology/Guideline by the Government to establish the criteria and regulate a merit-based procedure for the selection of directors and other leadership positions, which will also apply to the appointment of the director of the Agency for Medicines and Medical Equipment (MALMED). The recommendation for the adoption of such a document is further elaborated in the Analysis of discretionary powers in the appointment of leadership structures in state bodies, as well as the Action Plan which is an integral part of the Analysis.

4.2 COMPOSITION OF STANDING AND PROVISIONAL COMMISSIONS

In accordance with the Law on Medicines and Medical Devices, the director of the Agency for Medicines and Medical Equipment (MALMED) appoints the members of standing and provisional commissions operating within MALMED. These commissions at the Agency decide on matters within the Agency's purview, including production and marketing of medicines, licenses for import of medicines, clinical trials of medicines and medical devices, homeopathic medicines, approval of the import of medicines that do not have marketing authorization, etc.

The law stipulates that the director of the Agency appoints commission members from among distinguished medical, dental, pharmaceutical, and other professional and scientific individuals, who have at least ten years of work experience in the relevant field.

However, the Law does not regulate certain issues and allows MALMED or the Ministry of Health to adopt secondary legislation. Such issues include:

- - Precise criteria for the appointment of commission members;
- - Procedure for the selection of commission members;
- - Procedure for the establishment of ad-hoc commissions;

- Detailed funding mechanisms for the commissions, including the remuneration of commission members and how such remuneration will be calculated;

This situation creates the possibility for the director to decide with a wide margin of discretionary powers on these issues and potentially make different decisions each time, leading to significant legal uncertainty. Alternatively, the director may adopt a piece of secondary legislation (Regulation, Guideline, etc.) to regulate the selection and funding of each commission with a wide margin of discretionary powers.

Additionally, the MALMED has an Ethics Committee functioning as a standing commission responsible for issuing authorizations for the commencement of clinical trials. The law only stipulates that the Committee is formed by the Minister of Health. However, it does not prescribe the procedure and criteria for the formation of the ethics commission by the Minister of Health, allowing the minister to discretionarily form the ethics commission and potentially include individuals who are closely related to him (in familial, friendly, or political terms), thereby creating a conflict of interest.

Based on Article 20, paragraph 6 of the Law on Health Insurance, the Management Board of the Health Insurance Fund has adopted a Rulebook on the composition and manner of operation of medical commissions of the Health Insurance Fund,²⁶ as a general document encompassing medical commissions that decide on the rights under mandatory health insurance.

The Rulebook (Article 3, paragraph 1) stipulates the following:

"Medical commissions are generally formed from among doctors employed at healthcare institutions as external members and doctors employed at the Fund as internal members from the area of the municipality or the city of Skopje."

Furthermore, the Rulebook stipulates that medical commissions are formed by a decision of the director of the Fund, upon the proposal of the head of the Regional Office of the Fund, and members of the medical commissions for assessing temporary incapacity for work and exercising other rights under mandatory health insurance receive pecuniary remuneration for their work, the amount of which is determined by a decision of the director of the Fund. With such worded provisions, the appointment and dismissal of members of medical commissions are based on the discretionary power of the director. Criteria for their appointment (title, experience, specialty in medicine) are not established.

Additionally, criteria for determining the amount of pecuniary remuneration, or the manner in which it is paid (per session, monthly lump sum, etc.), are not prescribed. Forming medical commissions in this manner poses a high risk of corruption, as well as justified suspicions of nepotism and subjectivism. Considering that medical commissions at the Health Insurance Fund decide on citizens' rights and that the source of pecuniary remuneration is the state budget, it is essential that the criteria and procedure for appointing and dismissing commission members are precisely, thoroughly, and clearly defined.

²⁶ <https://www.slvesnik.com.mk/Issues/42d1e2f457ee4b4a9e9f2900ff36a91c.pdf>

These normative powers of the Health Insurance Fund to adopt general secondary legislation carry the risk of envisaging additional discretionary powers or the risk of leaving sufficiently broad and unregulated space for forming commissions in a questionable manner.

The powers of the public administration, in general, to adopt secondary legislation to more closely regulate a specific area within its particular scope of work and to supplement certain matters of the Law with its general administrative acts are discretionary powers, as they have a certain freedom in regulating the content of the respective secondary legislation. This authority arises as a real necessity because not all situations can be fully and precisely regulated by law. However, there should be a legal basis for the adoption of such secondary legislation, which should be qualitatively prepared both procedurally and substantively (purposefully), to avoid leaving room for broad interpretation and thus its misuse for corruptive purposes.

4.2.1 FINDINGS AND RECOMMENDATIONS

The analysis of applicable legal provisions regarding the manner of forming commissions at the MALMED and the composition and manner of operation of medical commissions at the Health Insurance Fund indicates the following:

- The Law on Medicines and Medical Devices does not provide criteria for the appointment of commission members who conduct procedures for the import, approval, and marketing of medicines and medical devices;
- Criteria for determining the amount of pecuniary remuneration for commission members are not prescribed, creating thus the risk of subjectivism in appointing members to standing and provisional commissions, which affects the economical use of budgetary funds. The established situation is not in accordance with Articles 7, 8, and 9 of the Law on Medicines and Medical Devices and Article 37, paragraph 2 of the Law on Budgets.
- The Law on Health Insurance and the secondary legislation do not prescribe criteria or procedures for appointing members of commissions that decide on health insurance rights;
- The duration of the term of office of commission members and the amount of their pecuniary remuneration are not regulated.

Recommended solutions to address identified inconsistencies are as follows:

- Amend and supplement the Law on Medicines and Medical Devices to establish criteria for the appointment of commission members who conduct procedures for the import, approval, and marketing of medicines and medical devices, thereby ensuring a transparent procedure for appointing commission members;

- Until the necessary amendments and supplements to the Law are adopted, it is recommended that the director of the Agency for Medicines and Medical Equipment prepare and adopt an internal act that will determine the criteria for the appointment of commission members, who conduct procedures for the import, approval, and marketing of medicines and medical devices;
- Amend and supplement the Law on Health Insurance to establish criteria and procedures for the appointment of members of commissions, which decide on health insurance rights, the duration of the term of office of such commission members, and the amount of their pecuniary remuneration;
- Until the amendments and supplements to the Law on Health Insurance are adopted, it is recommended that the Ministry of Health adopt secondary legislation, guideline, or order that prescribes criteria and procedures for the appointment of members of commissions which decide on health insurance rights, the duration of the term of office of said members, and the amount of their pecuniary remuneration, and order the Fund to transpose these rules into its Statute.

4.3 DECISION-MAKING REGARDING RIGHTS RELATED TO THE PERFORMANCE OF HEALTHCARE ACTIVITIES

- **SPECIALIZATIONS/SUB-SPECIALIZATIONS**

The Law on Health Protection stipulates that the Government of the Republic of Macedonia adopts a four-year program for the needs of specialist and subspecialist medical staff in accordance with the network of healthcare institutions. The program establishes the need for specialist and subspecialist medical staff for each year separately based on the following criteria: the number and age structure of specialists and subspecialists, waiting times according to the electronic list of scheduled examinations and interventions, and the need for the use of specialist-consultative and hospital healthcare services in the municipality or public healthcare institution.

Furthermore, Article 148 of the Law prescribes that the referral of healthcare workers and associates for specialization or sub-specialization is done by healthcare institutions providing healthcare services, in a procedure and manner determined by their general acts. The Law also prescribes how the scoring and ranking of each candidate is done, based on a previously announced public call for awarding specializations, which specifies the number of vacancies for each type of specialist studies.

However, a review of the general acts (statutes) of several public healthcare institutions²⁷ reveals that they contain only a general provision defining the competence

²⁷ <https://dermatologija.org.mk/statut/>
<https://kardiologija.mk/sites/default/files/medika/doc/regulativa/160511-statut-jzu-uk-kardiologija.pdf>
http://www.hematologija.zhm.mk/upload/files/statut_hematologija.pdf

of the Management Board to decide on the referral for specialization or sub-specialization, but not the manner and criteria for selection. This vagueness in the Law and statutes of public healthcare institutions actually allows for discretionary decision-making, enabling referral of candidates for specialization who are not the highest-ranked, indicating that not always the best qualified candidates are sent for further professional development. Additionally, these decisions are not publicly disclosed, and the lack of transparency in the procedure leaves further room for suspicions regarding the objectivity of decisions.

- **ISSUANCE OF LICENSES FOR PERFORMING HEALTHCARE ACTIVITIES**

The procedure for issuing licenses for performing healthcare activities within the network of healthcare institutions is regulated under Chapter IX of the Law on Health Protection (Articles 227 to 232). The procedure for granting the license is conducted by the Ministry of Health (MoH), with a decision to institute the licensing procedure, where Article 229, paragraph 4 of the Law on Health Protection specifies the elements of the decision to commence this procedure.

The procedure for granting a license is prepared, organized, and conducted by a commission for the implementation of the licensing procedure, established by the MoH, and composed of a chair, a vice-chair, at least three members, and their deputies (Article 229, paragraph 7). This provision does not specify an upper limit on the number of commission members, as the lower limit of at least three members is determined by the Law. This implicitly grants discretionary power to the MoH to determine the final number of commission members, which poses a risk of appointing an unreasonably large number of members.

Members of the commission are appointed from among employees of the MoH and experts from the relevant field for which the license is being granted (Article 229). The lack of specific criteria for appointing commission members allows the MoH to appoint individuals who may potentially lack sufficient competence. The Law also stipulates certain restrictions, whereby commission members cannot be individuals who are in a marital relationship, have a kinship up to the second degree,²⁸ have been employed or have been members of management bodies of the applicant in the past three years, or have any other legal or factual relationship with the applicant.

According to the Law (Article 230, paragraphs 32 and 33), the commission prepares a written evaluation report and a proposal decision for the selection of the most favorable offer for each licensing procedure, which it submits to the Minister of Health.

²⁸ or are related based on adoption or guardianship with the bidder or candidate, with their legal representative, and in cases in which the bidder or candidate is a legal entity, with members of its management, supervisory, or other bodies and executive authorities.

After the completion of the licensing procedure, the Commission, in the final phase, proposes to the Minister the selection of the most favorable offer with a ranking list of candidates or the termination of the procedure. Based on the evaluation report and the Commission's proposal, the Minister may decide to select the top-ranked candidate or instruct the Commission to rectify identified deficiencies in the licensing procedure and re-rank the offers, without specifying in which cases the Minister may do so. Additionally, the Minister has the authority of deciding to terminate the procedure in cases determined by this Law.

From the way the procedure is regulated, it follows that the Commission's proposal is non-binding, and the Law grants the Minister discretionary power in issuing licenses, which can potentially be abused for corrupt purposes. Consequently, in the final phase of the procedure, the risk of corruption is very high.

- **DECISION-MAKING REGARDING EMPLOYMENT RIGHTS**

The Law on Health Protection (Article 204) grants discretionary authority to the director of a public health institution (PHI) and the Minister of Health. Specifically, this legal provision defines the cases in which the employment of a healthcare worker or associate terminates by operation of the law, and in the following article (Article 204-a), it stipulates an exception to this rule. This exception allows, for the purposes of uninterrupted performance of healthcare activities within the network of healthcare institutions, the director of the healthcare institution, with the prior consent of the healthcare worker or associate, to make a decision once a year to extend the employment contract of a healthcare worker or associate, who has fulfilled the conditions for acquiring pension based on age, up to a maximum age of 67 years. Additionally, according to this legal provision, the director's decision to extend the employment of the healthcare worker or associate is to be confirmed by the Minister of Health.

This legal provision, as worded, allows for selectivity in the decision-making. Although there may be consent from the healthcare worker to extend the employment and a decision made by the director, **the Minister may choose not to confirm this decision, and the Law does not require the reasons to be explained if the Minister does not confirm the decision.** This provision causes legal uncertainty and unpredictability, as the right to employment is decided based on the discretionary power of the Minister. The medical community has also raised this issue publicly.

According to the Independent Trade Union of Employees at the University Clinics, Centers, Clinical Hospitals, and other Public Health Institutions in the Republic of North Macedonia, based on the execution of this discretionary authority in the 2022-2023 period, the Minister of Health did not approve the extension of employment for 180 healthcare workers at the Skopje clinics until the age of 67.²⁹

²⁹ <https://www.slobodnaevropa.mk/a/rampa-za-selektivnoto-penzioniranje-na-lekarite-/32860142.html>

The selective use of this discretionary right by the Minister resulted in a significant outflow of highly skilled personnel from public health institutions, thereby depriving young doctors of the opportunity to acquire knowledge transfer. This, in turn, has a detrimental effect on the overall quality of healthcare services provided to citizens. Additionally, there was considerable pressure from the Trade Union on this matter.

As a result of all this, the Parliament of the Republic of North Macedonia adopted amendments and supplements to the Law on Health Protection, amending Article 204-a. With the adopted amendments, based on a declaration for the continuation of employment even after meeting the conditions for old-age pension, the director of the public health institution (PHI) is obliged to extend the employment contract of the healthcare worker/associate. Furthermore, for the given declaration, only a notification is required to be sent to the Minister of Health and the Health Insurance Fund. **In this way, the discretionary power of the Minister has been removed, and positive effects are anticipated from this legal solution in the future.**

4.3.1 FINDINGS AND RECOMMENDATIONS

Laws grant broad discretionary powers, particularly when deciding on certain rights closely associated with the performance of healthcare activities. From the analysis of discretionary powers in decision-making regarding the awarding of specializations and sub-specializations, as well as the issuance of licenses for performing healthcare activities, **it can be concluded that:**

- The Law on Health Protection regulates the criteria and the manner in which the need for specialist and subspecialist personnel is determined and prescribes the criteria for scoring and ranking candidates. However, neither the Law nor the secondary legislation impose an obligation on the Management Board of the public health institution (PHI) to select the highest-ranked candidates for awarding specializations or sub-specializations, rendering the decision-making process non-transparent;
- The procedure for issuing licenses for performing healthcare activities is meticulously regulated in all phases and is conducted by a commission established for that purpose. However, the commission does not make the final decision; it merely submits a ranking list and a proposal to the Minister, who is not bound by this proposal and, without any criteria, may instruct the commission to prepare a new ranking list. This effectively constitutes the Minister's discretionary power, leaving room for potential abuses in the decision-making process.

To achieve greater transparency and objectivity in the decision-making process for awarding these rights, **the following recommendations are proposed:**

- The Ministry of Health should order that all public health institutions (PHIs) include in their statutes, under provisions which stipulate the authority of the Management Board to decide on the awarding of specializations/sub-specializations, an obligation to follow the ranking list and select the highest-ranked candidates when making decisions;
- Regarding the procedure for awarding licenses for performing healthcare activities, **it is necessary** to refine the existing legal provisions so that, when making the decision, the Minister is obligated to follow the proposed ranking by the commission. Alternatively, if the Minister does not accept the ranking, such a decision must be thoroughly reasoned.

ANNEX 1 – OVERVIEW OF DOCUMENTS

1. Law on General Administrative Procedure
2. Law on Administrative Disputes
3. Law on Public Sector Employees
4. Law on Transformation into Regular Employment
5. Law on Labor Relations
6. Law on Health Protection
7. Law on Medicines and Medical Devices
8. Rulebook on the Content of the Application, the Method of Registration of Homeopathic Medicines, the Form, and Content of the Documentation
9. Rulebook on the Content of the Application and Specific Conditions Regarding the Premises, Equipment, and Personnel for Obtaining Wholesale Distribution Authorization for Medicines
10. Rulebook on the Content of the Application and the Method of Obtaining Import Authorization for Medicines
11. Rulebook on the Registration of Traditional Herbal Medicines
12. Rulebook on Obtaining Marketing Authorization for Medicines
13. Law on Health Insurance
14. Rulebook on the Composition and Manner of Operation of Medical Commissions of the Health Insurance Fund
15. Statute of the Health Insurance Fund
16. National Strategy for the Prevention of Corruption and Conflict of Interest 2021-2025
17. Annual Report on the Implementation of the National Strategy by the State Commission for the Prevention of Corruption for 2023
18. Annual Report of the Ombudsman for 2022
19. Annual Report of the Ombudsman for 2023
20. Audit Report of the State Audit Office on the Operation of the Agency for Medicines for 2020
21. Methodology for Anti-Corruption Legislation Check, State Commission for the Prevention of Corruption, 2020
22. Corruption Proofing of Legislation (CPL) Monitoring and Evaluation Methodology, RAI, 2023

ANNEX 2 – ACTION PLAN

DISCRETIONARY POWERS IN THE HEALTH SECTOR

The attached Action Plan is only a proposal and will be subject to consultations with relevant institutions, with the aim of jointly reviewing and developing appropriate activities to address the findings under the above presented analysis.

Additionally, it should be noted that wherever an activity for amending and supplementing or developing a new law is proposed, alongside stated relevant institutions, the Parliament of the Republic of North Macedonia will also be involved as a partner.

FINDING	RECOMMENDATIONS	ACTIVITIES	INDICATORS	INLINE INSTITUTIONS	DEADLINE FOR IMPLEMENTATION
<p>1. The Law on Health Protection does not regulate criteria, nor does it establish a transparent, competitive, and merit-based procedure for the selection and dismissal of directors of public health institutions (PHIs) and the selection and dismissal of members of management boards of PHIs.</p>	<p>Establishing criteria and regulating a transparent, competitive, and merit-based procedure for the selection and dismissal of directors of public health institutions (PHIs) and the selection and dismissal of members of management boards of PHIs.</p>	<p>- Amend and supplement the Law on Health Protection to establish criteria, as well as a transparent, competitive, and merit-based procedure for the selection and dismissal of directors of public health institutions (PHIs) and the selection and dismissal of members of management boards of PHIs.</p>	<p>Amended and Supplemented Law on Health Protection</p>	<p>Ministry of Health</p>	<p>May 2025</p>

		Until the amendments and supplements to the Law on Health Protection are adopted, the Ministry of Health should issue adopt secondary legislation, guideline, or order prescribing criteria, as well as a transparent, competitive, and merit-based procedure for the selection and dismissal of directors of PHIs and for the selection and dismissal of members of management boards of PHIs, and order PHIs to transpose these rules into their Statutes.	Guideline adopted with criteria, as well as a transparent, competitive, and merit-based procedure for the selection and dismissal of directors of public health institutions (PHIs) and the selection and dismissal of members of management boards of PHIs.	Ministry of Health	September 2024
			Transposition of said guideline into the statutes of PHIs	PHI	October 2024
2. The Law on Health Protection and the statutes of public health institutions (PHIs) do not stipulate an obligation to select the highest-ranked candidates in procedures for awarding specializations/sub-specializations.	To prescribe an obligation for the Management Board to select the highest-ranked candidates for awarding specializations/sub-specializations.	- Amendments to statutes of PHIs in coordination with the Ministry of Health to include an obligation for the Management Board.	- Amended and supplemented statutes of PHIs	- MoH - PHI	December 2024

<p>3. The Law on Health Protection grants discretionary power to the Minister in making decisions regarding the issuance of licenses for performing healthcare activities, which allows room for potential abuses in the decision-making process.</p>	<p>Refinement of the existing legal provisions so that, when deciding, the Minister is bound by the proposed ranking presented by the commission, or, if the Minister does not accept it, such a decision must be thoroughly reasoned.</p>	<ul style="list-style-type: none"> - Amendments and supplements to the Law on Health Protection 	<ul style="list-style-type: none"> - Amended and supplemented Law on Health Protection 	<ul style="list-style-type: none"> - MoH 	<p>April-May 2025</p>
<p>4. The Law on Medicines and Medical Devices does not provide a transparent, competitive, and merit-based procedure for the selection of the director of the Agency for Medicines and Medical Equipment.</p>	<p>To regulate a transparent, competitive, and merit-based procedure for the selection of the director of the Agency for Medicines and Medical Equipment.</p>	<ul style="list-style-type: none"> o Amend and supplement the Law on Medicines and Medical Devices to establish a transparent, competitive, and merit-based procedure for the selection of the director of the Agency for Medicines and Medical Equipment. The option related to amending the Government's Rules of Procedure and adopting a Methodology is included in the Action Plan for the administrative bodies. 	<ul style="list-style-type: none"> - Amended and supplemented Law on Medicines and Medical Devices 	<ul style="list-style-type: none"> - Ministry of Health 	<p>May 2025</p>

5. The Law on Medicines and Medical Devices does not establish criteria for the appointment of members of commissions responsible for conducting procedures for the import, approval, and marketing of medicines and medical devices.	To establish criteria for the appointment of members of commissions responsible for conducting procedures for the import, approval, and marketing of medicines and medical devices.	- Amend and supplement the Law on Medicines and Medical Devices to establish criteria for the appointment of members of commissions responsible for conducting procedures for the import, approval, and marketing of medicines and medical devices.	- Amended and supplemented Law on Medicines and Medical Devices	- Ministry of Health	May 2025
		- Prepare and adopt an internal act by the director of the Agency for Medicines and Medical Devices, establishing criteria for the appointment of members of commissions responsible for conducting procedures for the import, approval, and marketing of medicines and medical devices.	- Internal act adopted	- Agency for Medicines and Medical Equipment and - Ministry of Health	October 2024
6. The Law on Health Insurance does not regulate criteria, nor does it establish a transparent, competitive, and merit-based procedure for the selection and	Establishing criteria and regulating a transparent, competitive, and merit-based procedure for the selection and dismissal of	- Amend and supplement the Law on Health Insurance to establish criteria, as well as a transparent, competitive,	- Amended and supplemented Law on Health Insurance	Ministry of Health	May 2025

dismissal of directors of the Health Insurance Fund of the Republic of North Macedonia (HIFRNM) and members of the management board of the Fund.	directors of the Health Insurance Fund of the Republic of North Macedonia (HIFRNM), as well as members of the management board of the Fund.	and merit-based procedure for the selection and dismissal of directors of the Health Insurance Fund of the Republic of North Macedonia (HIFRNM) and members of the management board of the Fund			
		- Until the amendments and supplements to the Law on Health Insurance are adopted, the Ministry of Health should adopt secondary legislation, guideline, or order prescribing criteria, as well as a transparent, competitive, and merit-based procedure for the selection and dismissal of the director of the Health Insurance Fund of the Republic of North Macedonia (HIFRNM) and members of the management board of the Fund, and order the Fund to transpose these rules into its Statute.	- Guideline adopted with criteria, as well as a transparent, competitive, and merit-based procedure for the selection and dismissal of directors of the Health Insurance Fund of the Republic of North Macedonia (HIFRNM)	- Ministry of Health	September 2024
			- Statute of the HIFRNM aligned with the Guideline	- HIFRNM	October 2024

<p>7. The Law on Health Insurance and pieces of secondary legislation adopted under it lack:</p> <ul style="list-style-type: none"> - criteria or procedures for the appointment of members of commissions which decide on health insurance rights, - the duration of the term of office of said members, and - the amount of their pecuniary remuneration. 	<p>Establishing:</p> <ul style="list-style-type: none"> - criteria and procedures for the appointment of members of commissions which decide on health insurance rights, - the duration of the term of office of said members, and - the amount of their pecuniary remuneration. 	<ul style="list-style-type: none"> - Amend and supplement the Law on Health Insurance to establish: <ul style="list-style-type: none"> o criteria and procedures for the appointment of members of the commissions which decide on health insurance rights, o the duration of the term of office of said members, and o the amount of their pecuniary remuneration. 	<ul style="list-style-type: none"> - Amended and supplemented Law on Health Insurance 	<ul style="list-style-type: none"> - Ministry of Health 	<p>May 2025</p>
		<ul style="list-style-type: none"> - Until the amendments and supplements to the Law on Health Insurance are adopted, the Ministry of Health should adopt secondary legislation, guideline, or order prescribing criteria and procedures for the appointment of members of commissions which decide on health insurance rights, the duration of the term of office of these members, 	<ul style="list-style-type: none"> - Guideline adopted with criteria and procedures for the appointment of members of the commissions which decide on health insurance rights, the duration of the term of office of said members, and the amount of their pecuniary remuneration 	<ul style="list-style-type: none"> - Ministry of Health 	<p>September 2024</p>

		and the amount of their pecuniary remuneration, and order the Fund to transpose these rules into its Statute.	- Statute of the HIFRNM aligned with the Guideline	- HIFRNM	October 2024
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