



THE NATIONAL COUNCIL FOR SOLVING COMPLAINTS

**ACTIVITY REPORT
2010**



FOREWORD



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There have been a lot of discussions in 2010 with regards to the public procurements, and the topics were quite often in the headlines of the newspapers. From scandals in awarding public contracts to numerous legislative changes in the field, the public procurements have often been invoked in the context of a causal relationship with delayed infrastructure projects. Therefore, amid the economic recession, in the context in which public procurement is an increasingly sought financial source by the economic operators, the year 2010 meant a great challenge for the National Council for Solving Complaints (C.N.S.C.).

Actively involved in analyzing non-competitive practices and in implementing a rigorous and effective use of public money, C.N.S.C. has recorded excellent results, which showed that the institution has not abdicated its mission, that of a guarantor of equal treatment and legal access to public resources for any economic operator.

The quality of the activity that the Council has undertaken (**note - in 2010, out of the total of 6.562 of decisions issued by C.N.S.C., only 1.478% of these were cancelled and 0.548% were in part amended by the courts**), as well as the speed with which disputes filed by the economic operators were settled (**note - within the deadline of 20 days stipulated in G.E.O. no 34/2006, modified and completed**) are two fundamental elements which are the basis of our performance, this being due to the total independence of the institution, on the one hand, and on the other hand, the profile and experience of its employees, issues highlighted by the European Commission representatives.

Determined to strictly follow the rules of the European game, in 2011 the Council aims to promote and continuously implement all the legislative initiatives that will compete in the disappearance of unfair practices on public procurement market. I firmly believe that only a fair competition on the public procurement market can ensure a judicious use of public money, eliminating potential abuses of all actors in the system, be they economic operators or contracting authority.



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CHAPTER 1

N.C.S.C. ROLE AND MISSION

THE NATIONAL COUNCIL FOR SOLVING COMPLAINTS (N.C.S.C.) is an independent body with jurisdictional – administrative activity competent to solve complaints formulated by the economic operators within the public procurement procedures, which became a legal entity on 1 January 2007.

According to legislation, N.C.S.C. works in the virtue of its own Organization and Working Regulation, approved through the Government Decisions no. 786/2006 – published in the Official Journal, Part I no. 553 dated 27 June 2006.

In its activity, N.C.S.C. abides by the law only, in the exercise of its attributions the Council adopts decisions and in its activity N.C.S.C. ensures the coherent application of the legislation in force, in accordance to the right principles: legality, celerity, cross-examination and the right to defence.

In the virtue of the Government Emergency Ordinance (G.E.O.) no. 34/2006 regarding the attribution of contracts of public procurement of the concession contracts of public works and of the contracts of concession of services, modified and completed, N.C.S.C. is competent to solve complaints formulated within the attribution procedures, before closing the contract, through specialized panels, set up in accordance with the organization and working regulations.

According to the provisions of the article 267, paragraphs 1 and 2 of the G.E.O no.34/2006, modified and completed, the complaints lodged with the NCSC are solved by a panel formed of three members of the Council, of which one holds the capacity of Panel Chair. Within each panel, the Chair must hold a degree in law. For the good performance of the institution, as well as in order to rapidly solve the complaints lodged in, each panel for the solving of the complaints is allocated technical-administrative staff (an economical counsellor, a legal counsellor, a technical counsellor, and an expert).

Through Law no. 278/2010 regarding the approval of G.E.O. no. 76/2010 for modifying and completing the G.E.O. no. 34/2010, document published in the Official Journal of Romania no. 898 dated 31 December 2010, paragraph 3 was introduced to article 260, according to which *“The Council’s President has to be graduated in law”*. Therewith, through the same normative act paragraph 1 from article 290 was introduced, in the sense that *“the current and capital expenses funding of the Council assures the state budget, its President having the entity of main credits accountant”*.

The volume of activity developed within N.C.S.C. mainly reflects through the number of complaints lodged, through the number of decisions issued and through the number of solved files.



VALUES

RESPECT TOWARDS THE LAW - The spirit and letter of the law are essential in the activity developed by each employee of the institution, fact that involves the highest rank of objectivity in solving complaints formulated by the economic operators.

COMPETENCE AND CELERITY - The profile and experience of employees bestows to our institution a high credibility, our efforts being permanently intent on integrating these values within the market of inland public procurements.

COMMUNICATION AND TEAM SPIRIT - The decisions issued by the panels of solving the complaints formulated by the economic operators are based on internal communication and team work and combines the experience of some specialists with the seniority in the public procurement area.

EFFICIENT MANAGEMENT - Our institution's credibility consists in the capacity of top management in developing and permanently perfecting the human resources.



CHAPTER 2

HUMAN RESOURCES, MANAGEMENT AND ORGANIZATIONAL STRUCTURE

From the point of view of organizational structure, **during 2010 THE NATIONAL COUNCIL FOR SOLVING COMPLAINTS has worked with a number of 29 counsellors for solving the complaints in the public procurement field (from the 33 posts provided in conformity with G.D. no. 782/2006 for the approval of Organization and Work Regulation of the institution), which represented only 87,88% from the number of counsellors of solving the complaints in the area of public procurement belonging to the personnel diagram of the institution.**

The staff chart of THE NATIONAL COUNCIL OF SOLVING COMPLAINTS has included 55 more persons with the statute of technical-administrative staff (in accordance with the G.D. no. 782/2006 for the approval of Organization and Work Regulation of N.C.S.C. disposes of 64 positions allocated to the technical-administrative staff), however from these 8 have entered during 2010 in maternity leave.

To complete the personnel diagram, on 7 January, 2010 N.C.S.C. has put to audition 12 positions (counsellor – experience the economic area, determined period – 1 position; counsellor – experience judicial area determined period – 1 position; counsellor – experience technical area determined period – 1 position; expert – determined period – 1 position; counsellor - experience technical area, undetermined period 3 positions; counsellor - experience judicial area undetermined period – 1 position; counsellor - experience technical area undetermined area – 1 position; expert – undetermined period – 3 positions) however after taking the respective exam only a number of 6 positions has been filled (5 positions on undetermined period and a position with determined period).

Subsequently, at 17 March 2010, N.C.S.C. has organized another competition for a number of 6 positions (counsellor – experience in the economic area, determined period – 1 position; counsellor – experience in the judicial area determined period – 1 position; expert – determined period – 1 position; counsellor – experience in the economic area, undetermined period 3 positions) however this was cancelled in accordance to the provisions of G.E.O. no. 1/2010.

On September 9, 2010, following the favourable notice of the National Agency of Civil Servants no. 492363, connected with no. 492.651/05 August 2010, N.C.S.C. has organized a competition for filling a complaints solving counsellor position in the area of public procurement. For this position, the institution has published announcements in the Official Journal no. 272/10 August 2010, in "Romania Liberă" daily newspaper (10 August 2010), on the own site (www.cnsc.ro) and at the institution's notice board. At the respective competition three candidates have enrolled and competed, and on September 14, 2010, THE NATIONAL COUNCIL FOR SOLVING COMPLAINTS has transmitted to the Prime Ministry of Romania the proposal of nominating the admitted candidate.

At the end of 2010, the staff chart of the institution has registered 9 vacant jobs allocated to the technical-administrative staff and a vacant job as counsellor in solving the complaints in the area of public procurement.



Within THE NATIONAL COUNCIL FOR SOLVING COMPLAINTS on **December 31, 2010** a **number of 87 persons were employed (100% with higher education)**, amongst these **61 being women (70,11%)** and **26 men (29,89%)**, and the **average age was approximately 41 years old**.

Starting with 24 February 2010, the management THE NATIONAL COUNCIL FOR SOLVING COMPLAINTS is assured by Mister Bogdan Lehel Lorand, who was elected as chairman, in conformity with article 258, paragraph 1 and 2 from G.E.O. no. 34/2006, modified and completed.

In conformity with article 258, paragraph 41 from G.E.O. no. 34/2006, modified and completed, in exerting its attributions, the chairman of THE NATIONAL COUNCIL FOR SOLVING COMPLAINTS is assisted by a panel consisting of 3 members (Budulan Constantin, Pârvu Dumitru – Viorel, Popescu Bianca – Laura), chosen by secret vote, with an absolute majority, amongst the counsellors for solving the complaints in the public procurement field

In 2010, in view of respecting the principle of transparency, N.C.S.C. has founded a Statistics and IT Department, meant to offer the economic operators, to the public, but also to the competent authorities a much clear image and a more diversified one concerning the market of inland public procurement.

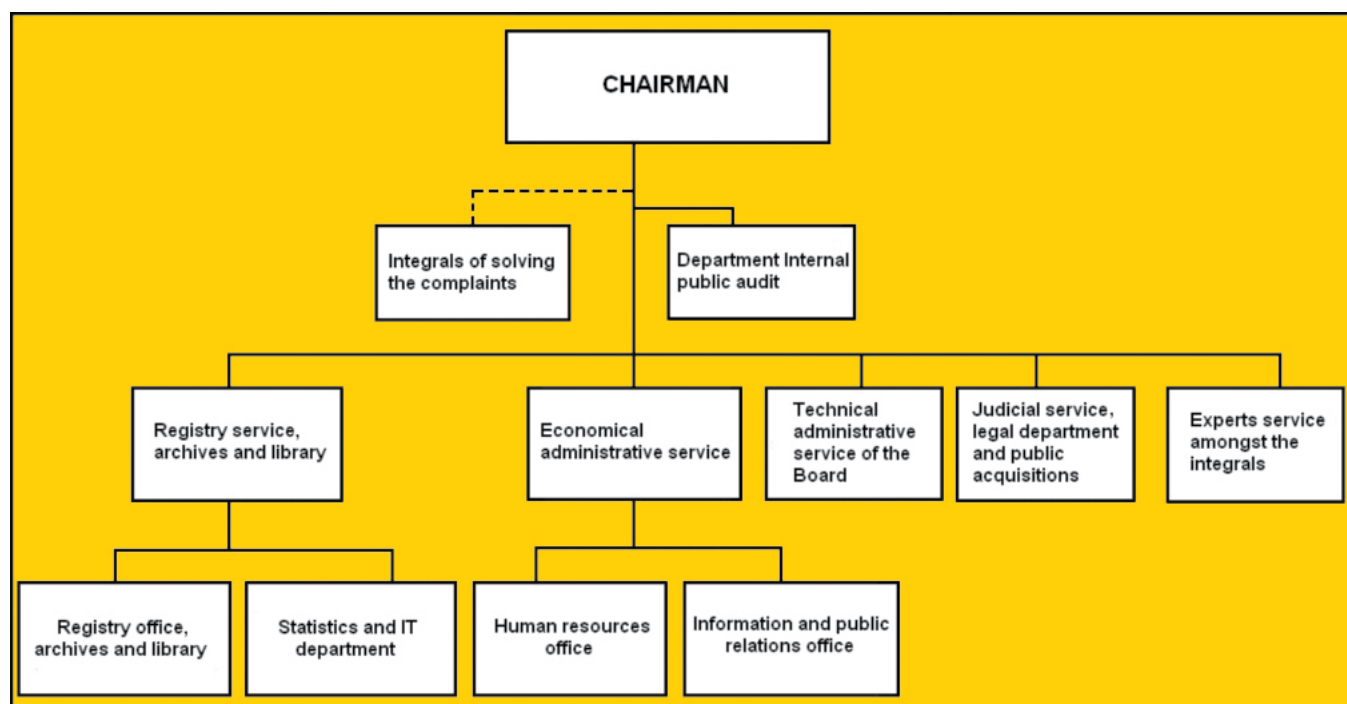


Fig. 1 – Staff chart

One of the priorities of the institution's top management in 2010 was the one for continuous training of staff. In this way, the institution has organized two courses of continuous training, where the counsellors for solving the complaints in the area of public procurement as well as the judges from the Bucharest Appeal Court have participated:

- 28 – 30 May 2010 – “Procedural aspects within public procurement”;
- 10 – 12 September 2010 – “Expert in public procurement”.



CHAPTER 3

COMPLAINTS (FILES) EVOLUTION FORMULATED BY THE ECONOMIC OPERATORS

Within 01.01 – 31.12.2010, the number of complaints (files) lodged with the N.C.S.C. has reached 7.867.

The monthly evolution of the files lodged with the Council has evolved as it follows:

• January	423	• July	634
• February	526	• August	643
• March	762	• September	591
• April	702	• October	512
• May	867	• November	595
• June	918	• December	694

Studying the evolution of the complaints (files) submitted by the economic operators and registered at N.C.S.C. in the first semester of 2010 it was noticed that their number has increased by 16,03% comparatively with a similar period of the precedent year and by 50,36% in relation to the first semester of 2008.

Subsequently, the second semester of 2010, after publishing in the Official Journal of Romania no. 453/02.07.2010 of G.E.O. no 76/2010 – which modified and completed G.E.O. no 34/2006 regarding the attribution of public acquisition contracts, of public works concession contracts and of services concession contracts – was noticed a decrease of “appetite” of the economic operators to making complaints.

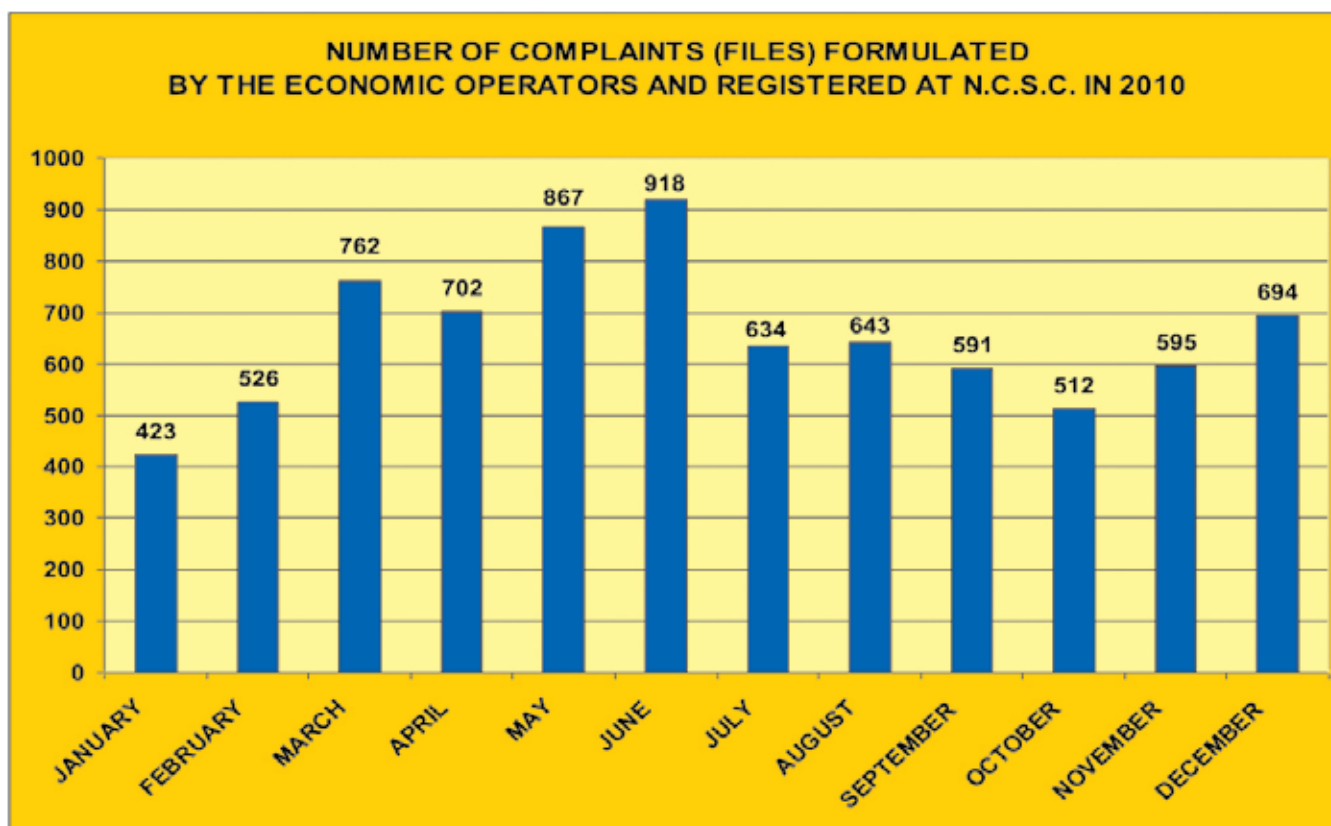


Fig. 2 – The evolution of complaints (files) formulated by the economic operators



The reason was constituted by completing G.E.O. no. 34/2006, with article 2781, paragraph 1, according to which *“to the extent in which the Council rejects the complaint, the contracting authority will retain from the objector from the participating guarantee in relation to the estimated value of the contract the following amounts:*

- a) *between 63.000 lei and 420.000 lei including - 1% from this value;*
- b) *between 420.001 lei and 4.200.000 lei including - 4.200 lei + 0,1% from which surpasses 420.001 lei;*
- c) *between 4.200.001 lei and 42.000.000 lei including - 7.980 lei + 0,01% from which surpasses 4.200.001 lei;*
- d) *between 42.000.001 lei and 420.000.000 lei including - 11.760 lei + 0,001% from which surpasses 42.000.001 lei;*
- e) *between 420.000.001 lei and 4.200.000.000 lei including - 15.540 lei + 0,0001% from which surpasses 420.000.001 lei;*
- f) *over 4.200.000.001 lei - 19.320 lei + 0,00001% from which surpasses 4.200.000.001 lei”.*

In terms of distribution by territorial units – administrative, the evolution of complaints submitted by the economic operators has evolved in 2010 as it follows:

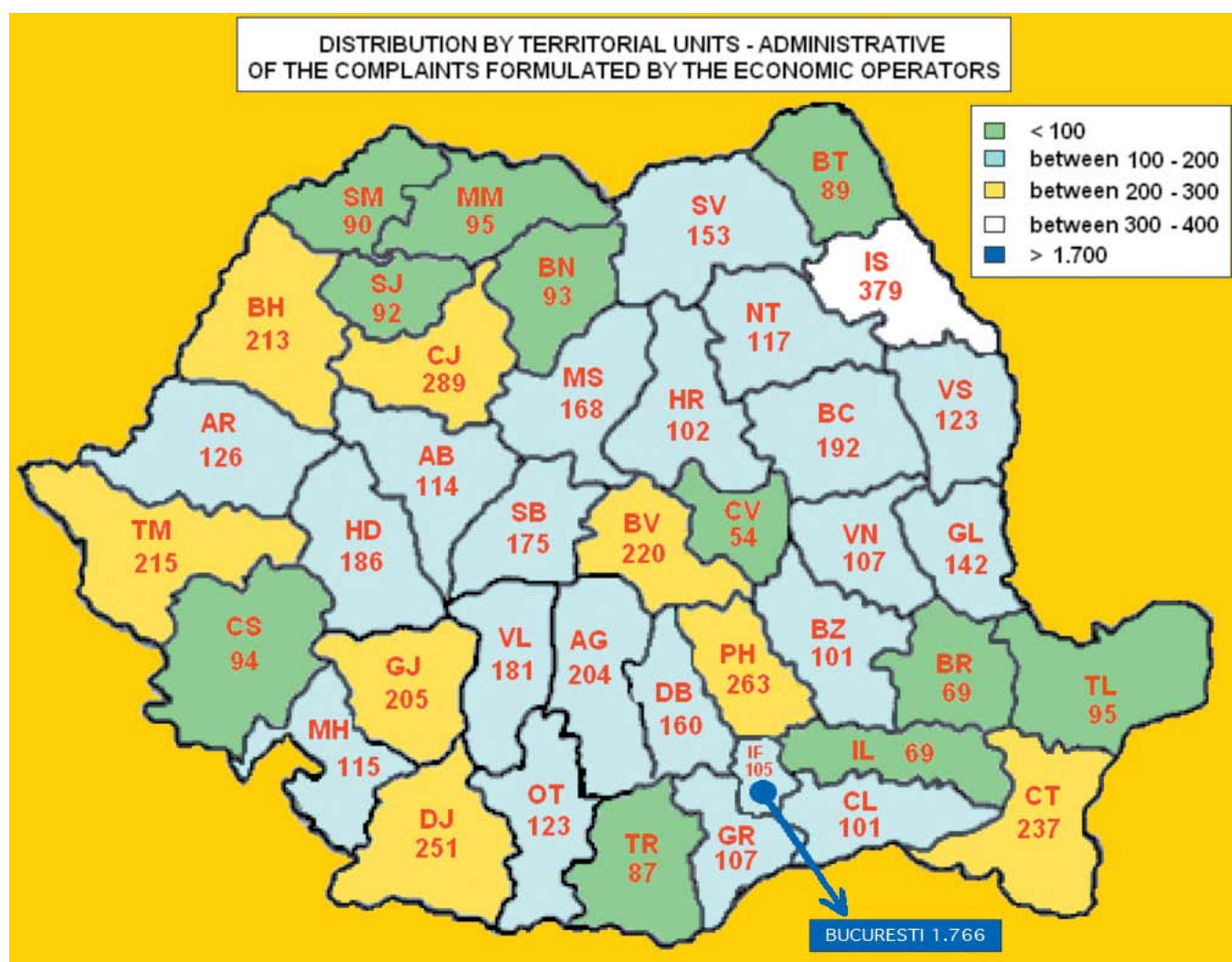


Fig. 3 – Distribution by territorial units – administrative of the complaints formulated by the economic operators



If we relate the number of complaints (7.867) submitted by the economic operators in 2010 and registered at N.C.S.C., to the number panels for the solving of the complaints (10) existent with the institutions, it results that during the interval of 1 January – 31 December 2010 each panel solved an average of 787 complaints (files), which meant a monthly caseload of approx. 67 files per panel.

In this context we have remark the fact that despite the high number of complaints (files) formulated in 2010 by the economic operators and of undersized staff chart of the institution, the panels for the solving of the complaints have managed to respect precisely the deadlines of solving the complaints provided by article 276, paragraph 1 from G.E.O. no. 34/2006, modified and completed (*"The council has the obligation to solve on merit the complaint within 20 days from the date of receiving the file of public acquisition from the contracting authority, respectively in 10 days in the situation of incidence of some exception that interferes with the merit analysis of the complaints, according to article 278 paragraph 1. In cases solidly justified, the deadline of solving the complaint may be prolonged only one time with another 10 days"*).

Per general, from its establishment until 31 December 2010, a number of 29.251 complaints (files) were lodged with the N.C.S.C.



CHAPTER 4

THE EVOLUTION OF DECISIONS ISSUED BY THE N.C.S.C.

Within 01 January – 31 December 2010, the total number of decisions where issued by the panels for the solving of the complaints was 6.562.

Deducted per months, the situation of the decisions issuance has evolved in 2010 as it follows:

• January	594	• July	714
• February	384	• August	551
• March	490	• September	513
• April	569	• October	462
• May	566	• November	483
• June	704	• December	532

It is noticed that **the number of decisions issued by the panels for the solving the complaints was inferior to that of complaints (files) formulated by the economic operators** this fact is due to article 273, paragraph 1 from G.E.O. no. 34/2006, modified and completed, which stipulates: “The complaints formulated within that same attribution procedure will be connected by the Council to pronounce a unitary solution”.

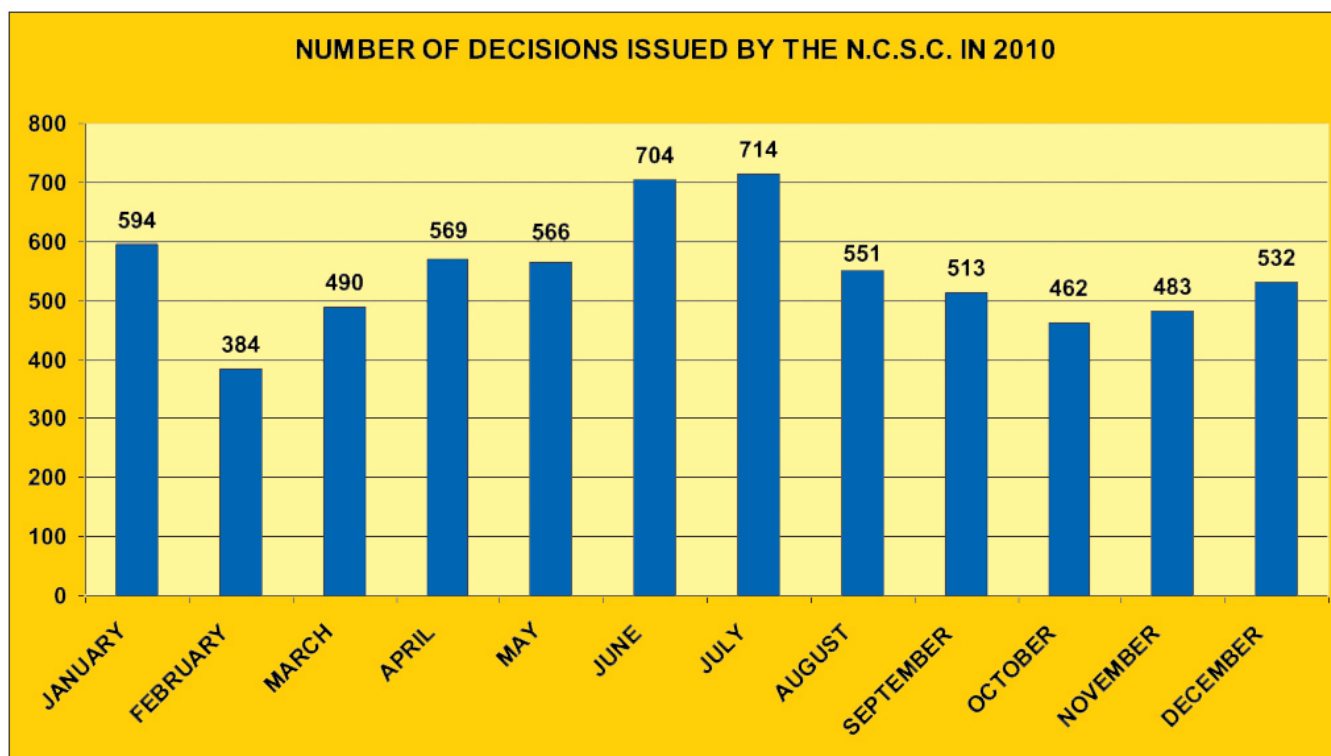


Fig. 4 – Evolution of the decisions issued by N.C.S.C.

Making a comparison between the number of the decisions issued in 2009 and those from 2010, during last year a decrease of 789 of the issued decisions was noticed.

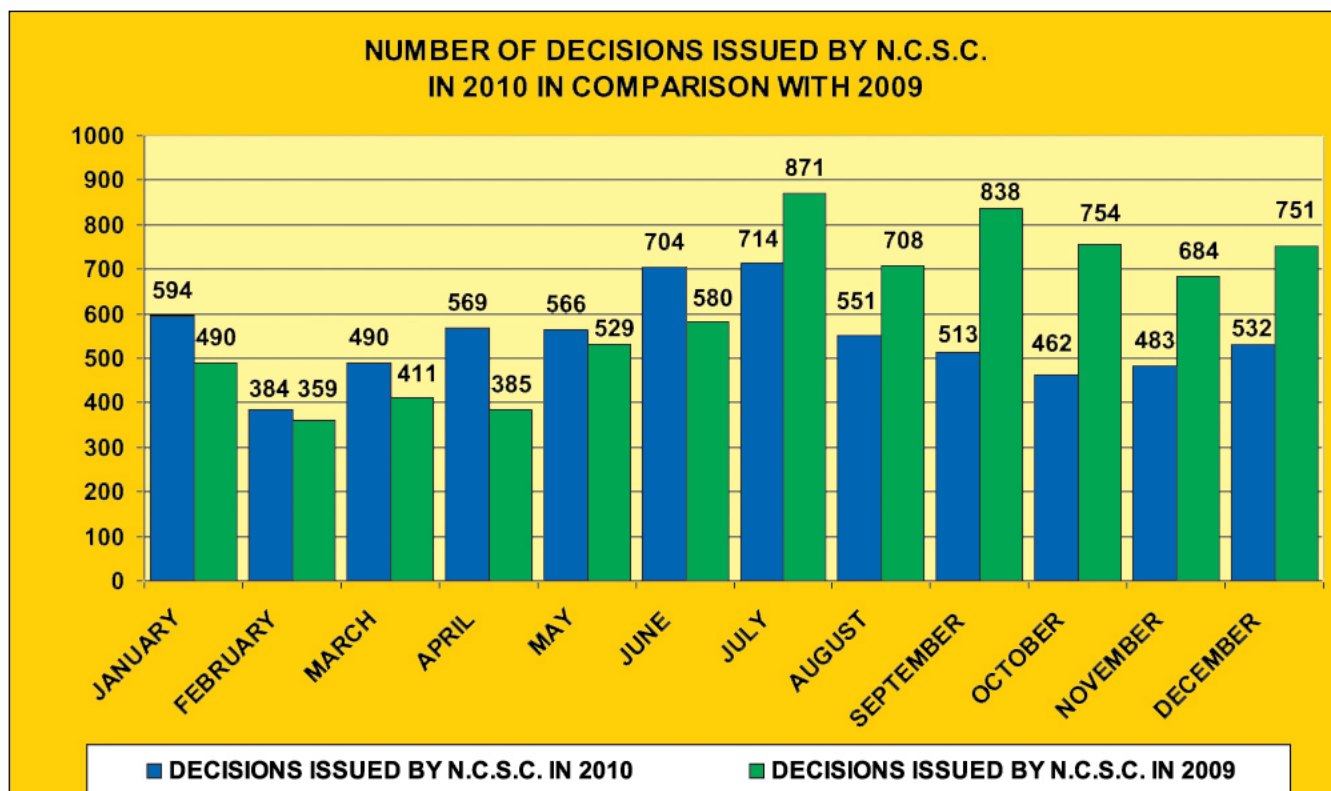


Fig. 5 – Number of decisions issued by N.C.S.C. in 2010 in comparison with 2009

The decrease is due to – as we had stated in the anterior chapter – the precaution of economic operators in recording complaints once upon entry into force of the provisions of G.E.O. no. 76/2010, in which it was stated ***“in the extent in which the Council rejects the complaint, the contracting authority will retain a certain amount from the participation guarantee in relation to the estimated value of the contract”***.

Per general, from the foundation of the institution and until 31 December 2010, the number of decisions issued by N.C.S.C. has been 24.654.



CHAPTER 5

EVOLUTION OF THE SOLVED FILES BY THE N.C.S.C.

As we have stated in **2010 the panels of solving the complaints within the N.C.S.C. have issued 6.562 decisions, fact that meant solving 8.070 files.**

The annual evolution of solving files by the panels of solving complaints within the Council is presented as it follows:

• January	737	• July	864
• February	501	• August	676
• March	638	• September	615
• April	720	• October	562
• May	684	• November	556
• June	889	• December	628

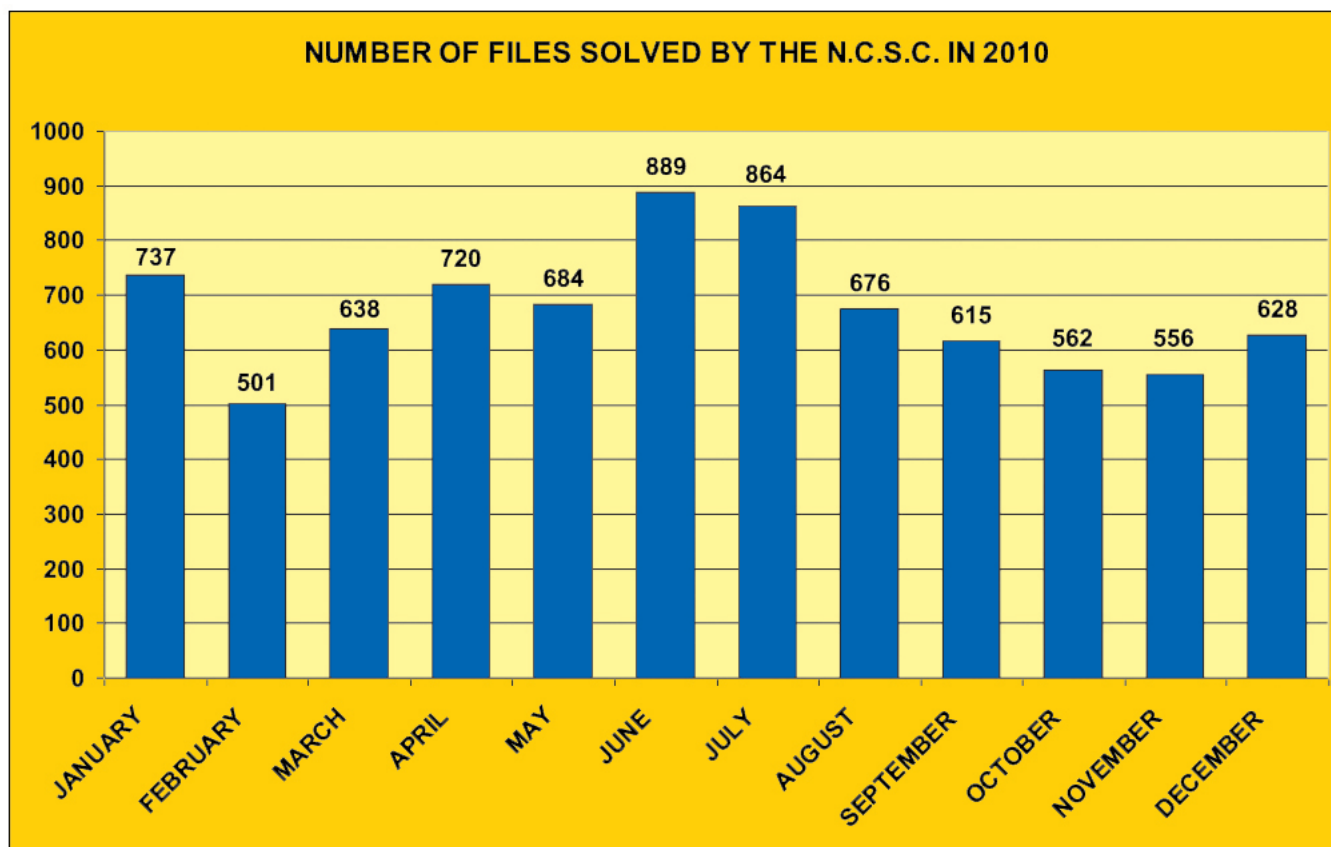


Fig. 6 – Evolution of files solved by N.C.S.C.

Per general, **since its foundation and until 31 December 2010, the total number of solved files by the panels of solving the complaints within the N.C.S.C. has reached 29.255.**



CHAPTER 6

SITUATION OF SOLVING COMPLAINTS REGISTERED AT N.C.S.C.

As we were stating in CHAPTER 4, within 01 January – 31 December 2010, the total number of the decisions issued by the panels of solving the complaints within N.C.S.C. has been of 6.562.

As a result of solving the complaints (files) formulated by the economic operators, 2.047 (31,195%) decisions have been registered in which the admittance of the complaints (files) formulated by the economic operators was disposed and 4.515 (68,805%) decisions through which the rejection of complaints (files) formulated by the economic operators on exception (delays, without object, inadmissible, lack of object and without object, introduced by persons without interest etc) or because these have been causeless.

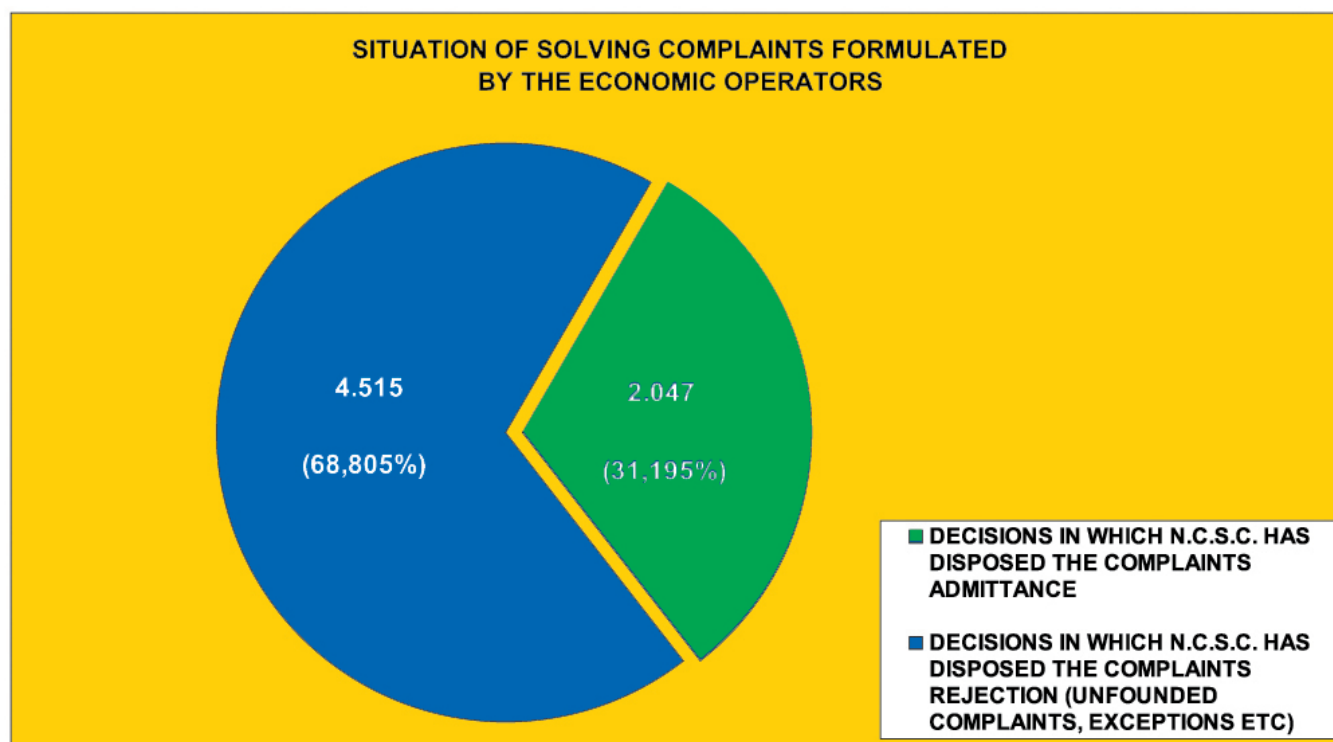


Fig. 7 – Situation for solving the complaints (files) formulated by the economic operators

The official data show that **from the 6.652 decisions issued by the panels of solving the complaints within N.C.S.C. in 2010, in 1.444 decisions (22%) panel of solving the complaints have disposed the admittance of complaints and retrieval of public acquisition attribution procedures, whereas in the case of other 603 decisions (9,18%) were disposed the admittance of complaints and annulment of public acquisition attribution procedures.**

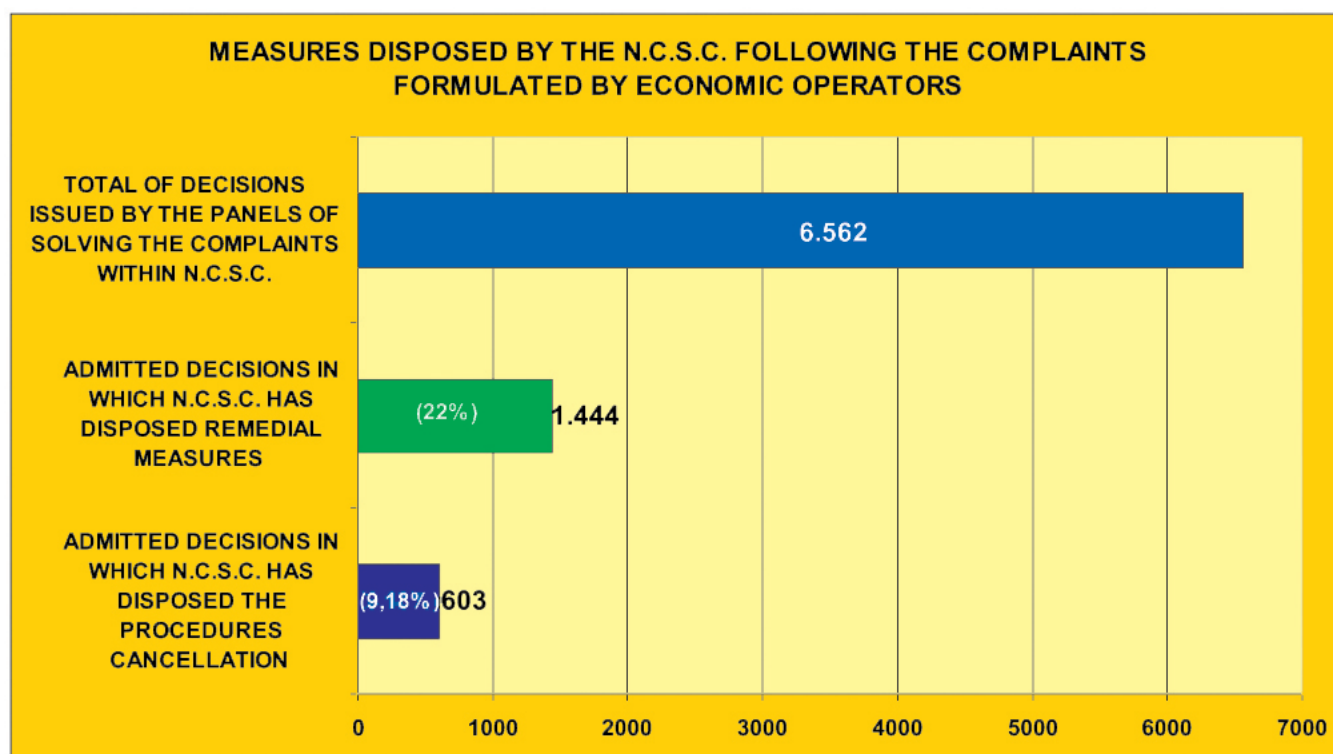


Fig. 8 – Measures disposed by N.C.S.C. in the case of the admitted contestations



6.1 – Estimated value of the public procurement procedures in which N.C.S.C. has issued decisions of complaints admittance

From the point of view of value, the total estimated amount of procedures within N.C.S.C. which has issued decisions of admittance of the complaints formulated by the economic operators in 2010 has been of 39.924.832.993,83 RON.

Stated in the unique European currency, the total estimated value of procedures in which decisions of admittance of complaints have been issued by the N.C.S.C. in 2010 was 9.483.558.515,364 EURO (*at a medium annual exchange rate communicated by B.N.R. of 4,2099 RON/EURO), and stated in the USA currency of 12.563.275.431,521 USD (*at a medium annual exchange rate communicated by B.N.R. of 3,1779 RON/USD).

From the total estimated value of procedures in which N.C.S.C. has issued decisions of admittance of complaints, the value of annulled procedures was of 11.481.214.583,95 RON (equivalent of 2.727.194.133,815 EURO, at a medium annual exchange rate communicated B.N.R. of 4,2099 RON/EURO), and that of the procedures in which retrieval measurements have been disposed has increased to 28.443.618.409,88 RON (equivalent of 6.770.839.203,475 EURO, at a medium annual exchange rate communicated B.N.R. of 4,2099 RON/EURO).

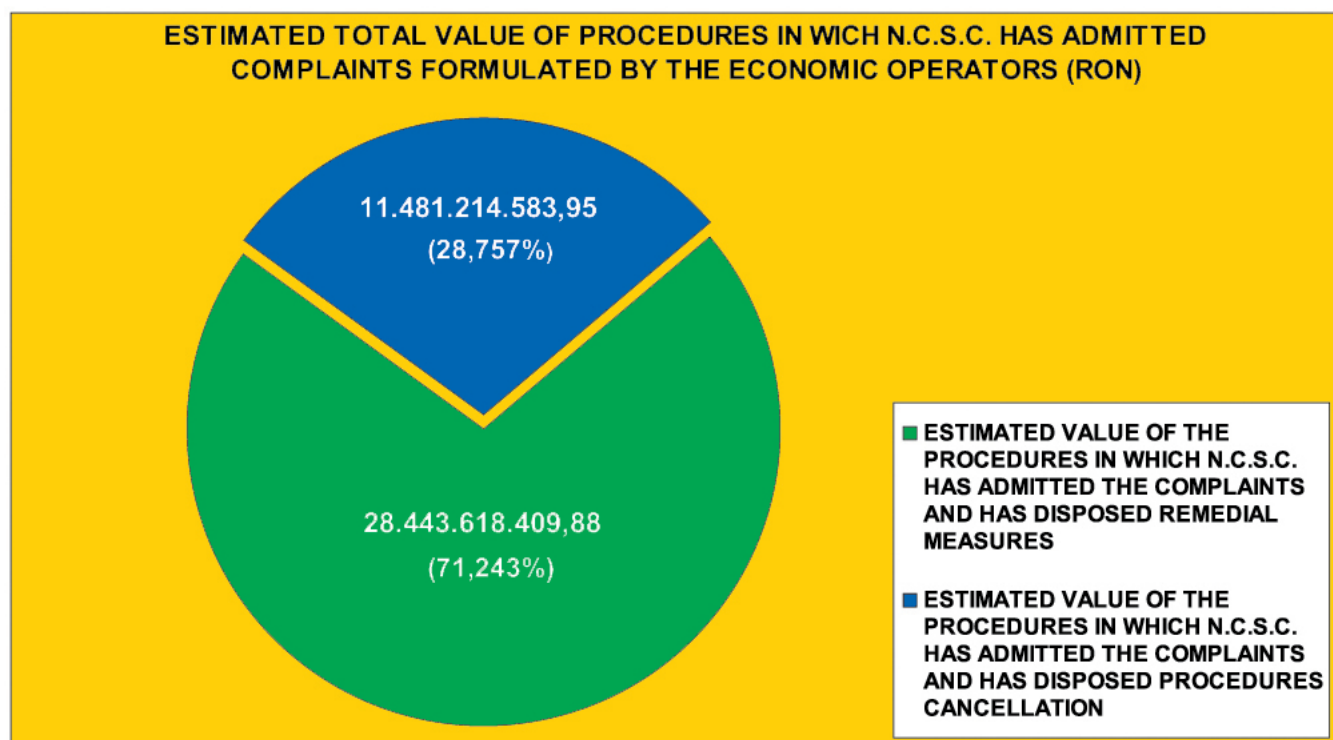


Fig. 9 – Total estimated value of the procedures in which N.C.S.C. has admitted the complaints formulated by the economic operators

CHAPTER 7

ESTIMATED VALUE OF THE PROCEDURES IN WHICH N.C.S.C. HAS ISSUED DECISIONS OF ADMITTANCE OF COMPLAINTS, IN COMPARISON WITH THE ESTIMATED VALUE OF PROCEDURES INITIATED IN S.E.A.P.

The official data supplied by the Public Acquisition Electronic System (S.E.A.P.) show that **in 2010, within the communication platform used in the process of public acquisition attribution process 50.454 procedures have been initiated (23.211 – ONLINE procedures and 27.243 – OFFLINE procedures), having a total estimated value of 80.105.126.944,47 RON (equivalent of 19.027.798.034,269 EURO, at a medium annual exchange rate communicated B.N.R. of 4,2099 RON/EURO).**

Statistics disclose the fact that **the estimated value of initiated ONLINE procedures in S.E.A.P. in 2010 was of 21.589.997.434,97 RON, and of OFFLINE procedures was of 58.515.129.509,50 RON.**

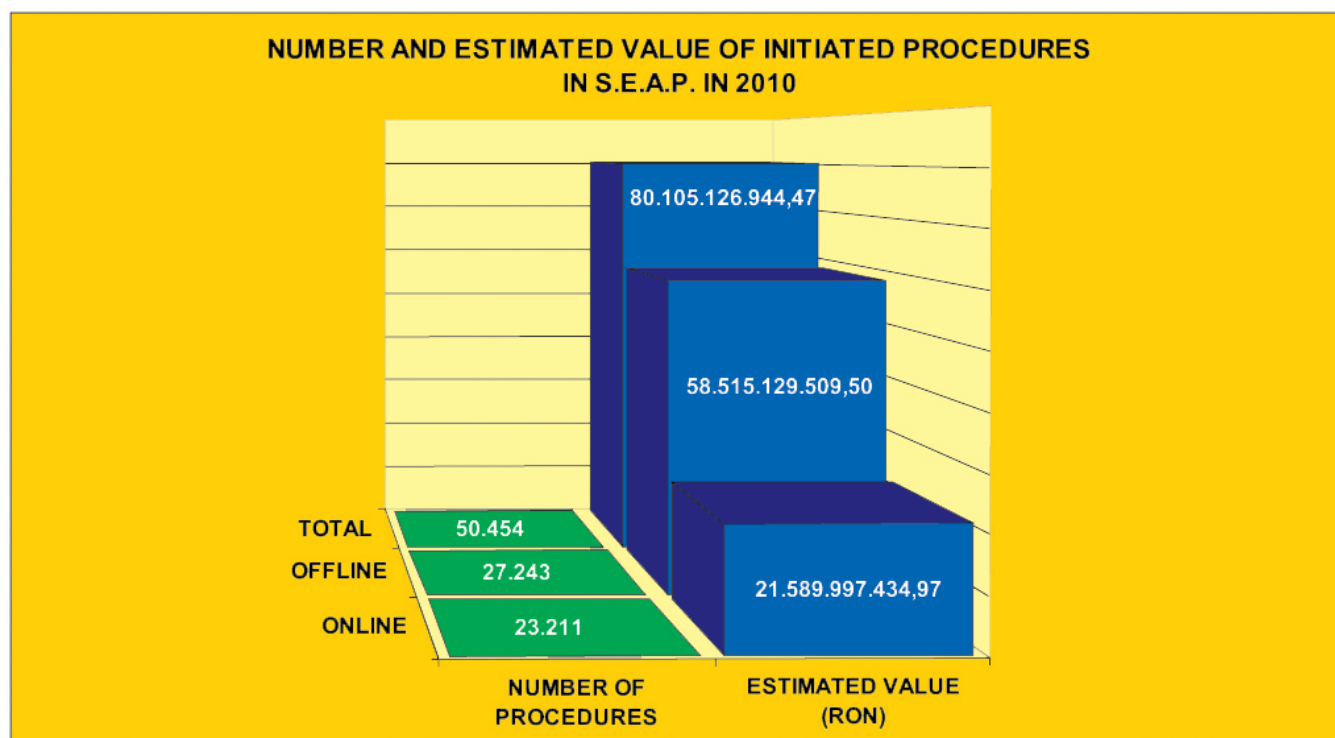


Fig. 10 – The number and estimated value of the procedures initiated by S.E.A.P. in 2010

A comparison between the annual estimated value of procedure initiated (ONLINE / OFFLINE) in the Public Acquisition Electronic System (S.E.A.P.) and the estimated value of procedures in which N.C.S.C. has issued decisions of admittance for the complaints formulated by the economic operators and has disposed certain measurements, discloses the following aspects:



- the estimated value of procedures in which N.C.S.C. has issued decisions of admittance for the complaints formulated by the economic operators and has disposed retrieval measurements was of approximately 28.443.618.409,88 RON, which represented 35,5% from the estimated value of procedures initiated in S.E.A.P.
- the estimated value of procedures in which N.C.S.C. has issued decisions of admittance for the complaints formulated by the economic operators and has disposed their annulment was approximately of 11.481.214.583,95 RON, which represented 14,33% from the estimated value of procedures initiated in S.E.A.P.

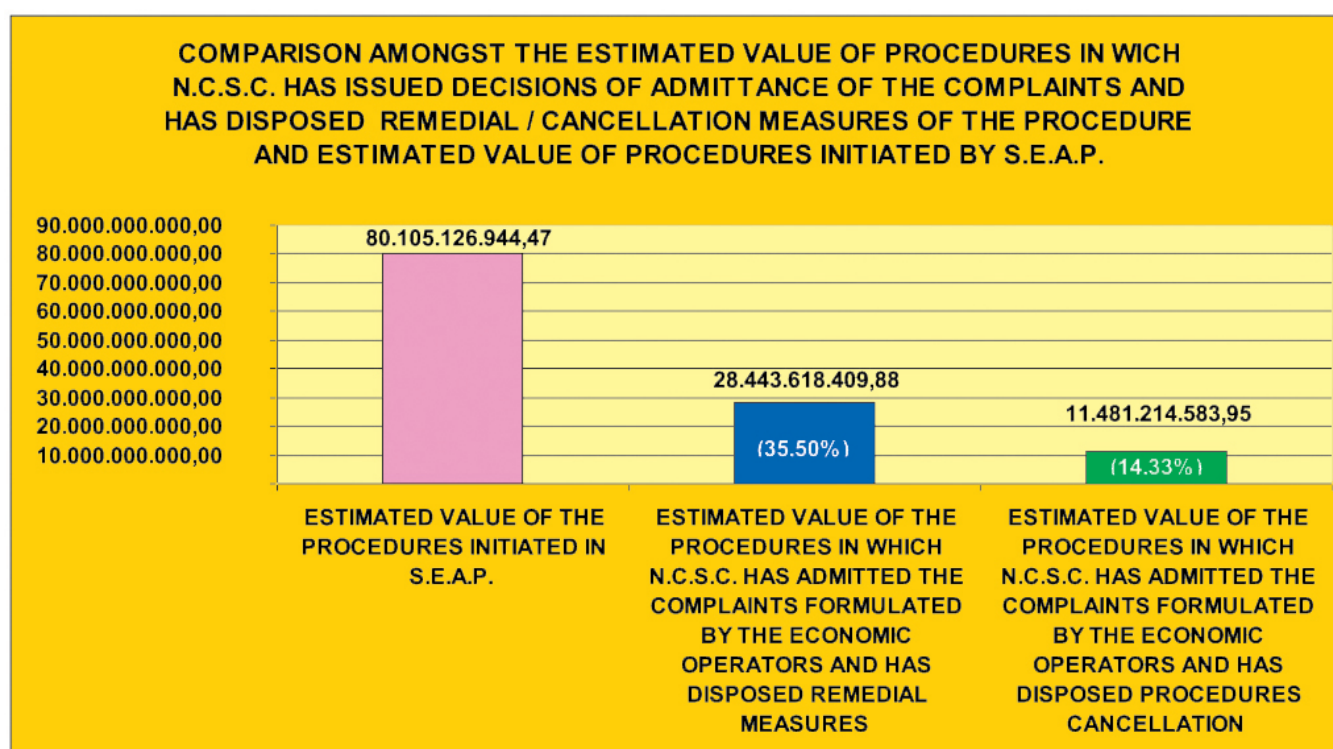


Fig. 11 – Comparison amongst the estimated value of the procedures in which N.C.S.C. has issued decisions of admittance of the complaints formulated by the economic operators and has disposed remedy / cancellation measures of the procedure and estimated value of procedures initiated by S.E.A.P.

Making a comparison between the numbers of procedures initiated in S.E.A.P. and the total estimated value of initiated procedures on the electronic platform used in the public acquisition contract attribution in 2009 and 2010, it was notice that in 2010 although the number of initiated procedures (ONLINE / OFFLINE) has decrease comparatively to the previous year with 10.680 procedures, although the total estimated value of initiated procedures has increased with 6.000.859.144,05 RON.

Despite the fact that both the total number of procedures initiate in S.E.A.P. (ONLINE / OFFLINE), as well as the number of complaints formulated by the economic operators registered at N.C.S.C. have known a decrease in 2010 comparatively with 2009, **if we are to compare the number of complaints (files) formulated by the economic operators with that of the procedures initiated S.E.A.P., we'll observe that in 2010 the number of complaints formulated by the economic operators and registered at N.C.S.C. has known a slight increase comparatively with the precedent year.**

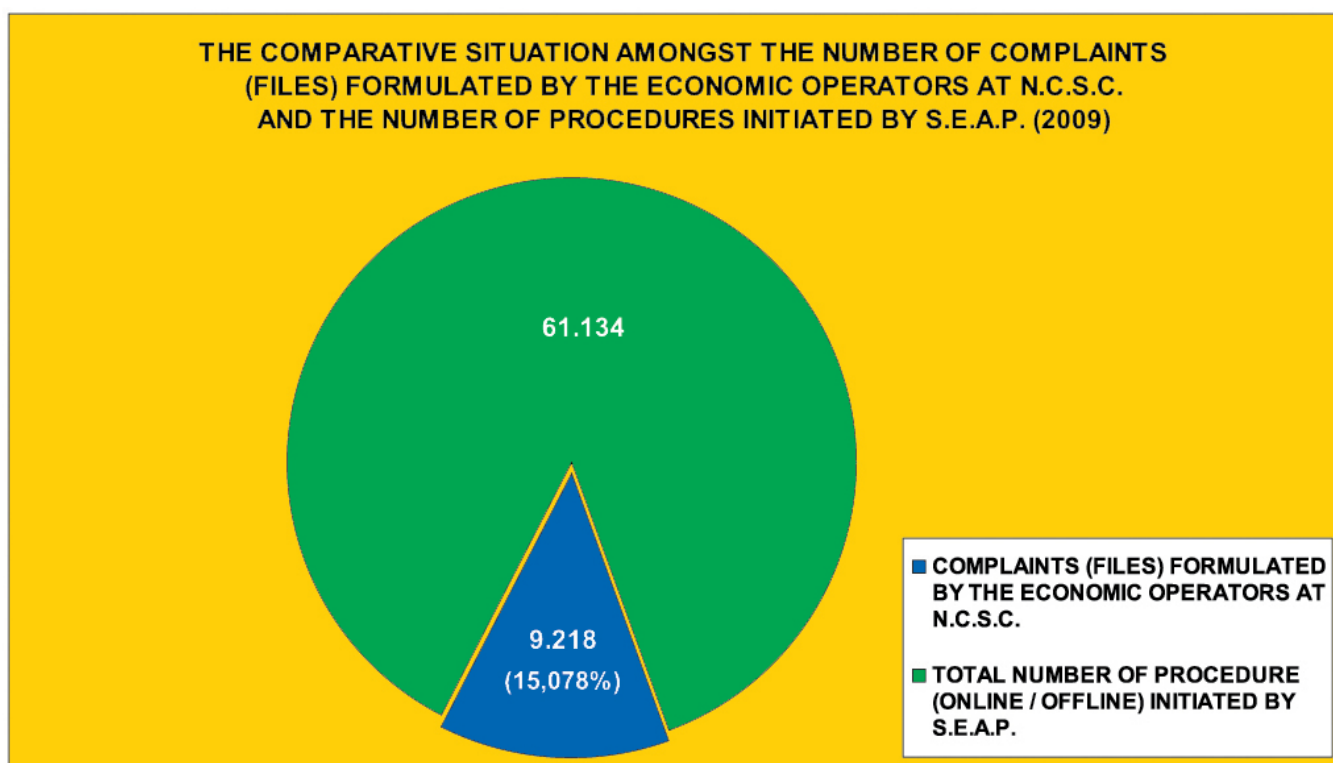


Fig. 12 – Total number of complaints formulated by the economic operators related to the number of procedures initiated by S.E.A.P. (2009)

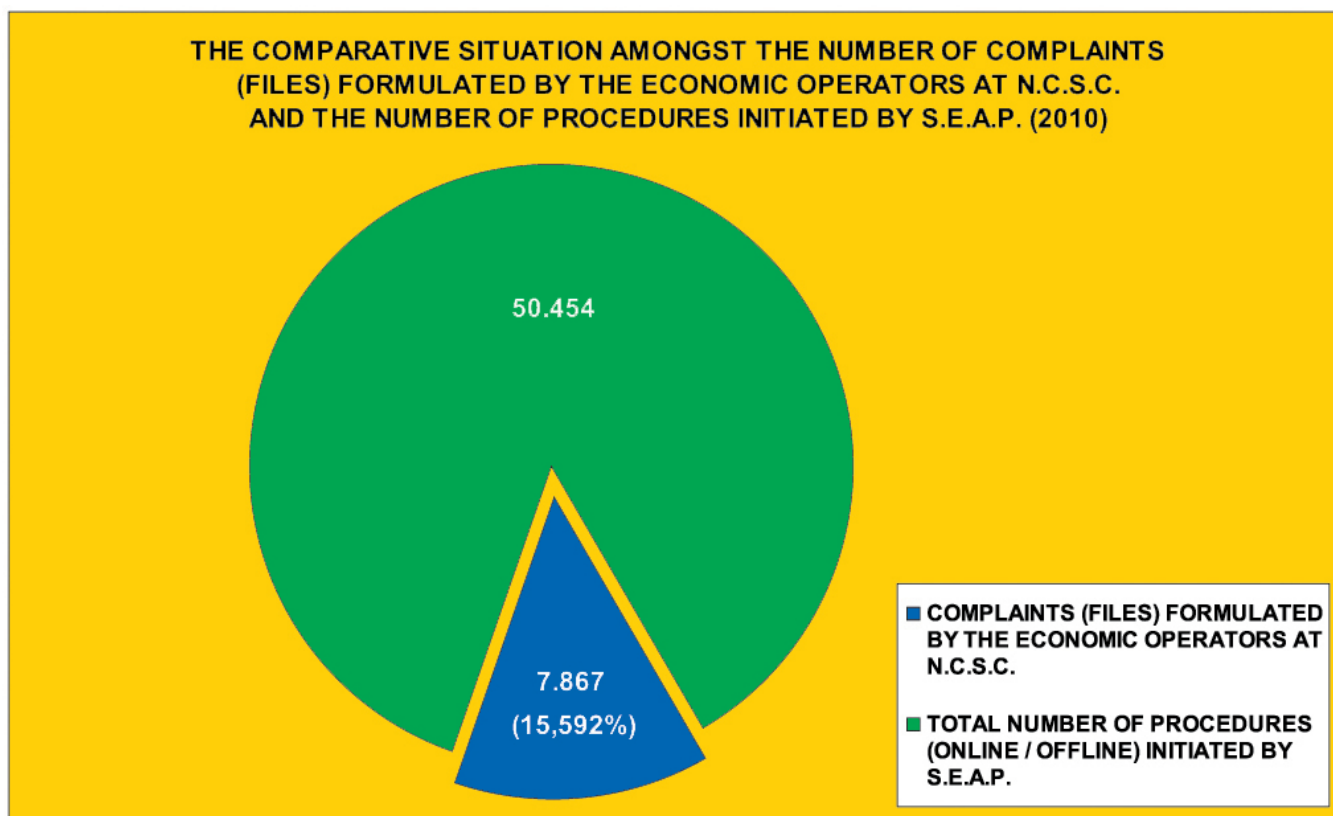


Fig. 13 – Total number of complaints formulated by the economic operators related to the number of procedures initiated by S.E.A.P. (2010)



CHAPTER 8

**OBJECT OF THE COMPLAINTS FORMULATED
BY THE ECONOMIC OPERATORS**

Analyzing the object of those 7.867 complaints (files) formulated by the economic operators and registered at THE NATIONAL COUNCIL FOR SOLVING COMPLAINTS IN 2020, has resulted that a number of 3.018 (38,363%) has pointed the attribution documentation and 4.849 (61,637%) the result of procedures.

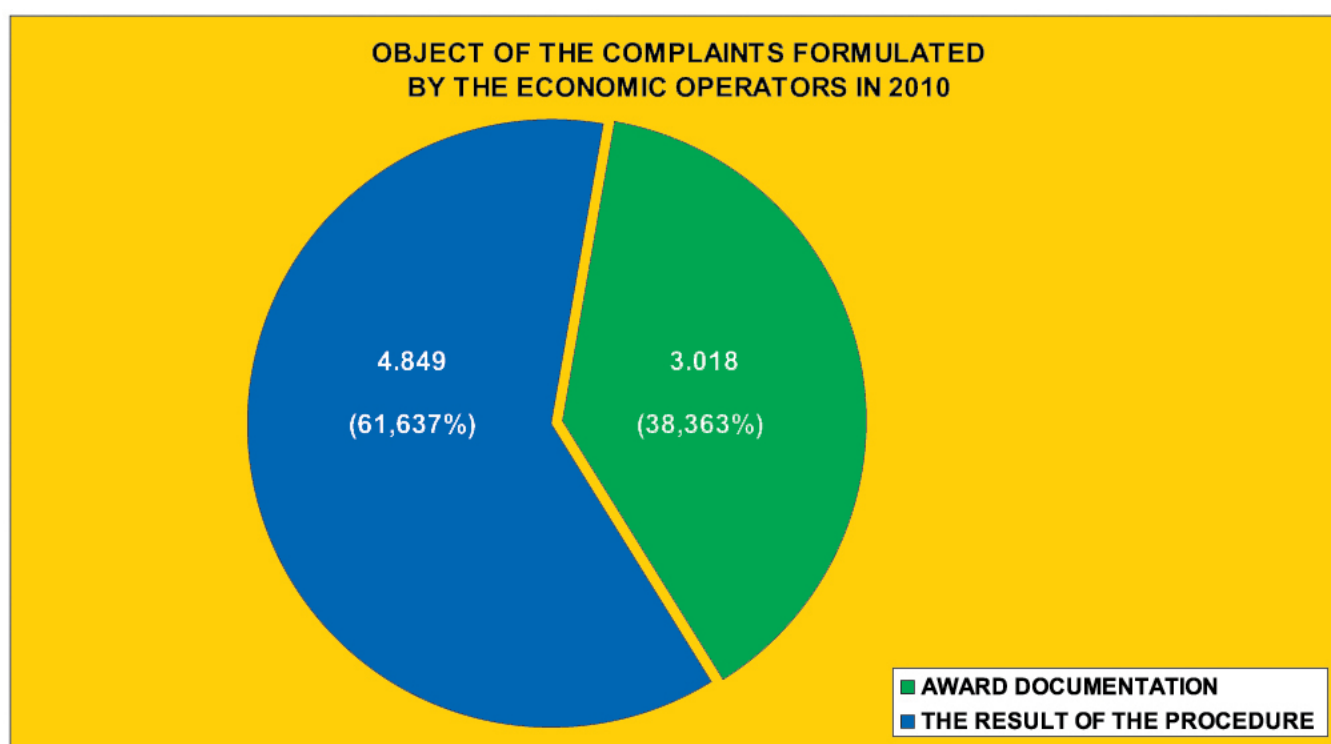


Fig. 14 – Object of the complaints formulated by the economic operators in 2010

In the first semester of 2010, from the 4.198 complaints formulated by the economic operators a number of 1.520 (36,217%) has pointed the award documentation and 2.678 (63,783%) concern the result of the procedure.

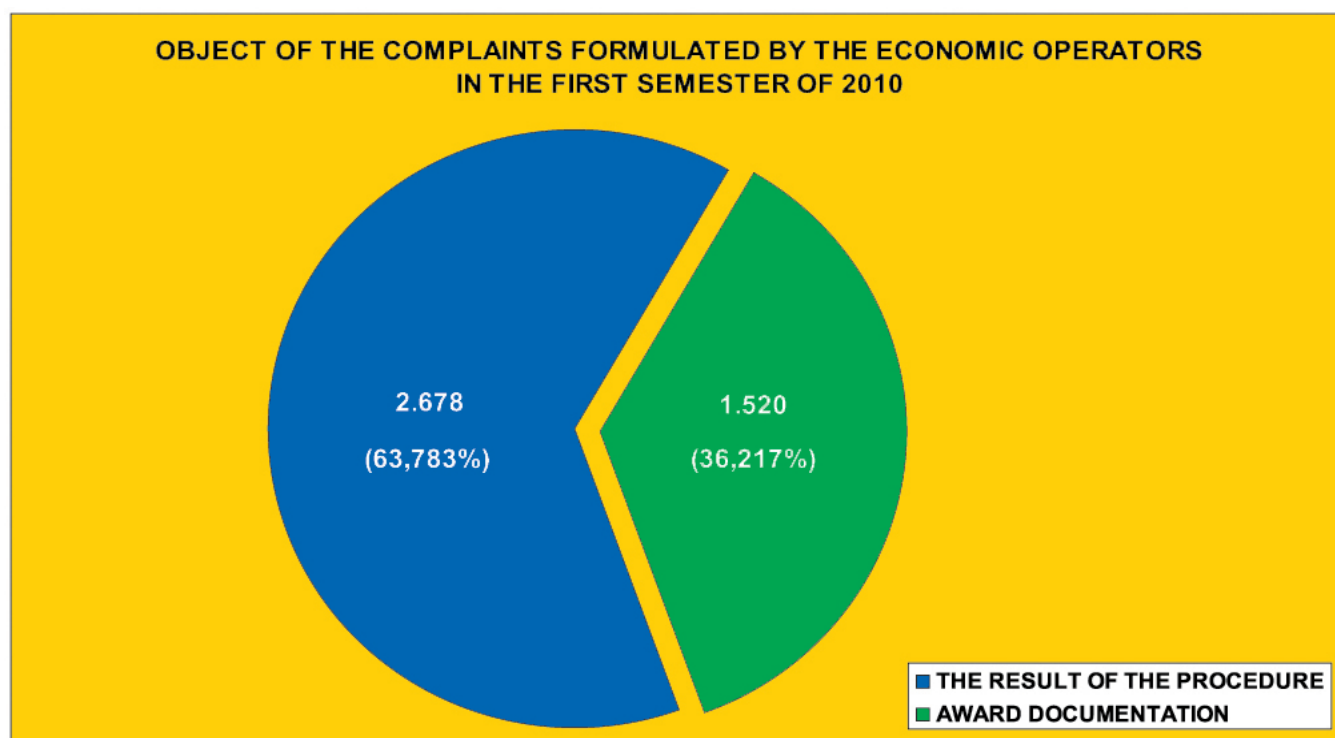


Fig. 15 – Object of the complaints formulated by the economic operators between 01 January - 31 June 2010

In the second semester of 2010, from the 3.669 complaints formulated by the economic operators and registered at N.C.S.C., 1.498 (40,829%) has pointed the award documentation and 2.171 (59,171%) the result of the procedure.

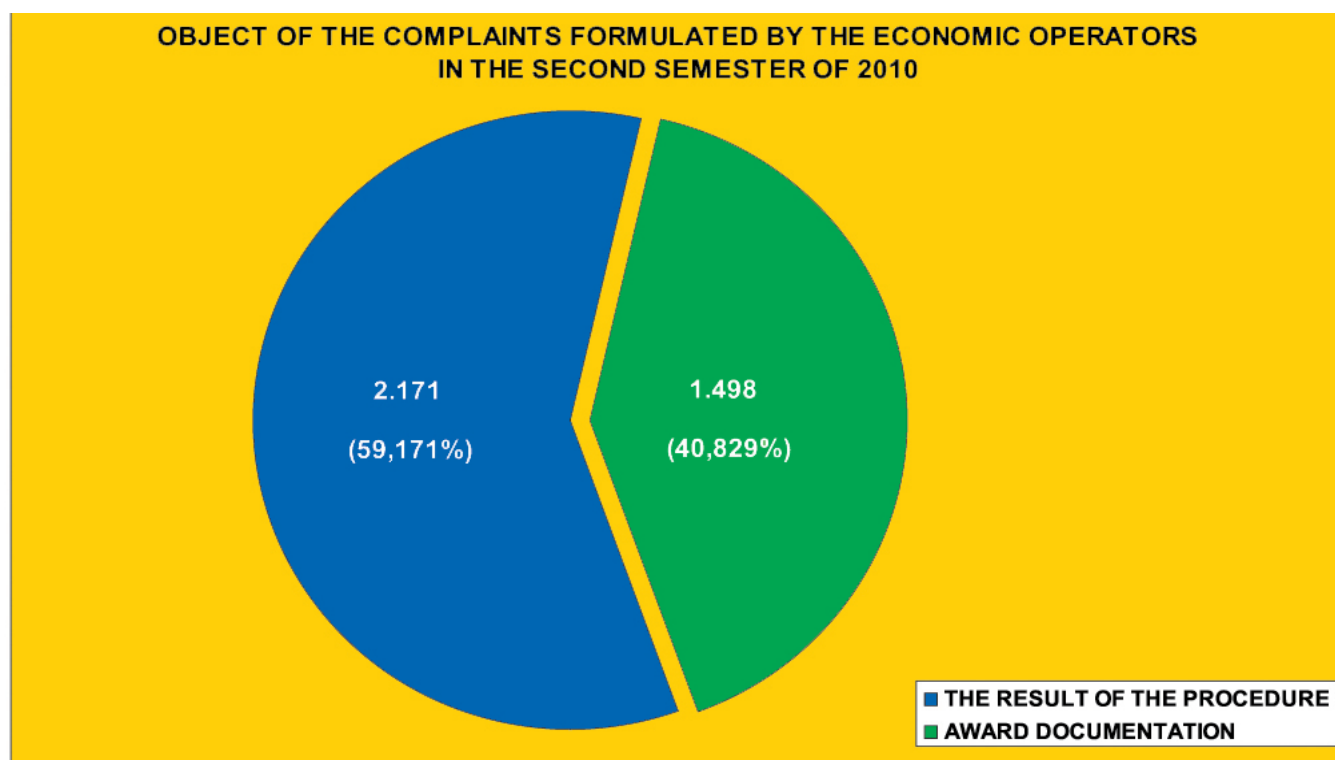


Fig. 16 – Object of the complaints formulated by the economic operators



between 01 July - 31 December 2010

Analyzing the object of the complaints formulated at N.C.S.C., it is noticed that once with the entrance in force of G.E.O. no. 76/2010 – which introduced the provision according to which “the contracting authority will retain to any economic operator a certain amount from the participation guarantee in relation to the estimated value of the contract in the case in which the Council rejects a formulated complaint” in relation with the result of the attribution procedures – **number of complaints formulated by the economic operators regarding the result of the procedure has known a decrease with 18,932% (- 507 complaints) in the second semester of 2010, comparatively with the previous period.**

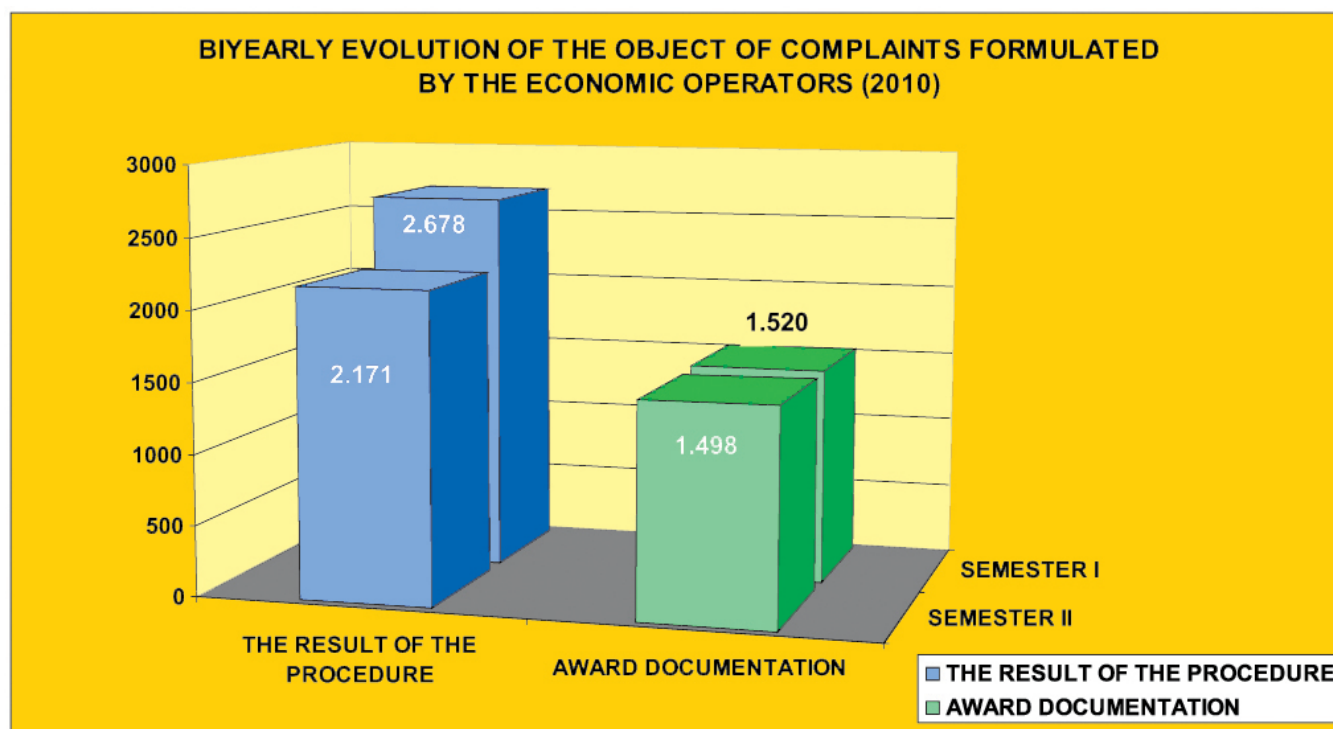


Fig. 17 – Object of the complaints formulated by the economic operators (biyearly evolutions)

Making an analysis of **the most frequent aspects denounced by the economic operators formulated at the award documentations** it was noticed that these target the following:

- qualification requests imposed by the contracting authorities – considered as disproportioned in relation to the nature and objects of contracts;
- requests of the evaluation factors used by the contracting authorities;
- award criteria used by the contracting authorities

Concerning **the most frequent aspects denounced by the economic operators within the formulated complaints at the result of the procedure** it was observed that these targeted the following:

- the evaluation method and designation of the winning declared offers;
- pointing the offers;
- the methods used to qualify some bidders;
- lack of some legal reasons from the contracting authorities in the moment of rejecting some offers.



CHAPTER 9

SITUATION OF DECISIONS ISSUED BY N.C.S.C. AND MODIFIED BY THE APPEAL COURTS AS A RESULT OF THE DEPOSED COMPLAINTS BY THE ECONOMIC OPERATORS / CONTRACTING AUTHORITIES

During 2010, from the total of 6.562 decisions issued by the panels of solving the complaints within N.C.S.C. 917 decisions have been attacked with complaint to the Appeal Court, however only 133 have been modified (partially / invalidated) by the courts.

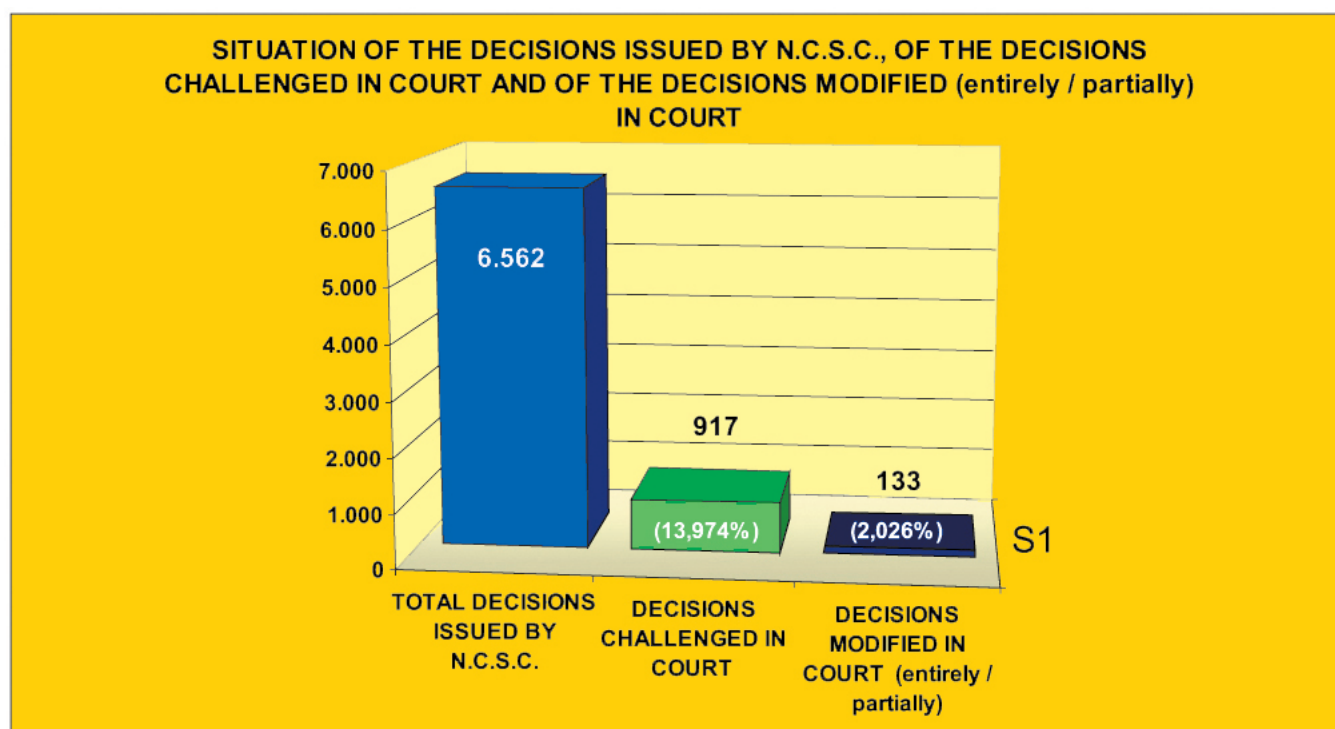


Fig. 18 – Number of decisions challenged in court and those modified (partially / cancelled) by courts related to the number of decisions issued by N.C.S.C.

Studying the above mentioned data **it is observed that from the total of decisions issued by the N.C.S.C. during 2010 only 2,026% have been modified (partially / invalidated) by the courts.**

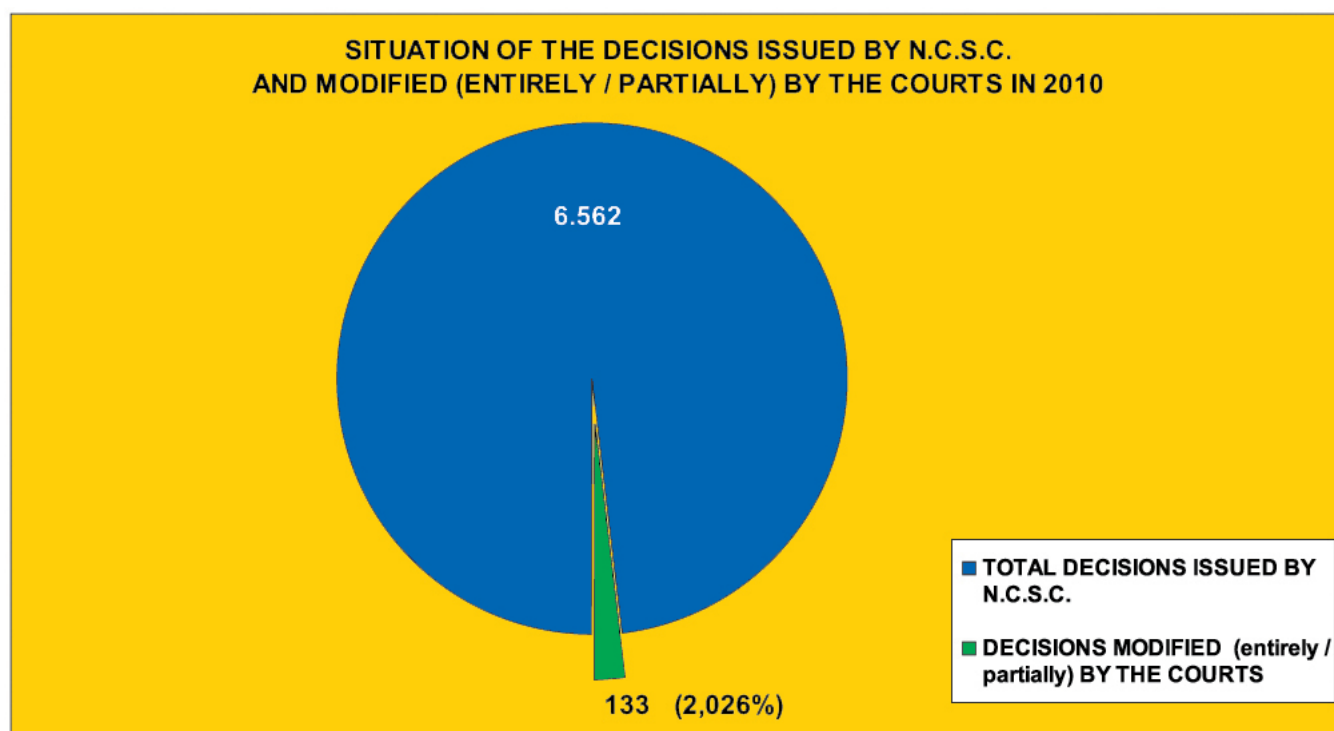


Fig. 19 – Number of decisions modified (entirely / partially) by the courts

From the 133 decisions admitted and modified by the courts, a number of 97 have been invalidated (entirely modified), whilst only 36 have been partially modified. Practically, this thing means that from the total of 6.562 decisions issued by the N.C.S.C. during 2010, only 1,478% from these have been invalidated by the courts and 0,548% modified only partially, fact that bestows to our institution a very high credibility rank.

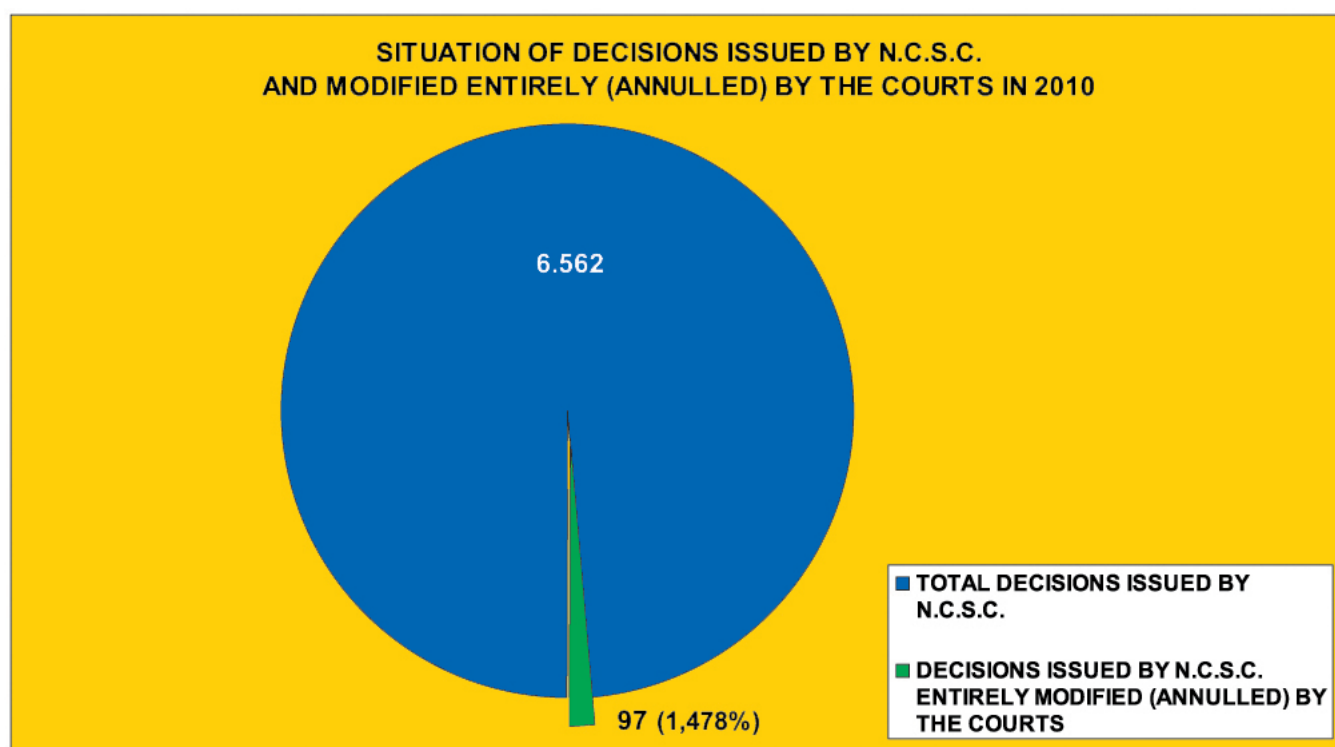


Fig. 20 – Number of decisions modified entirely (annulled) by the courts

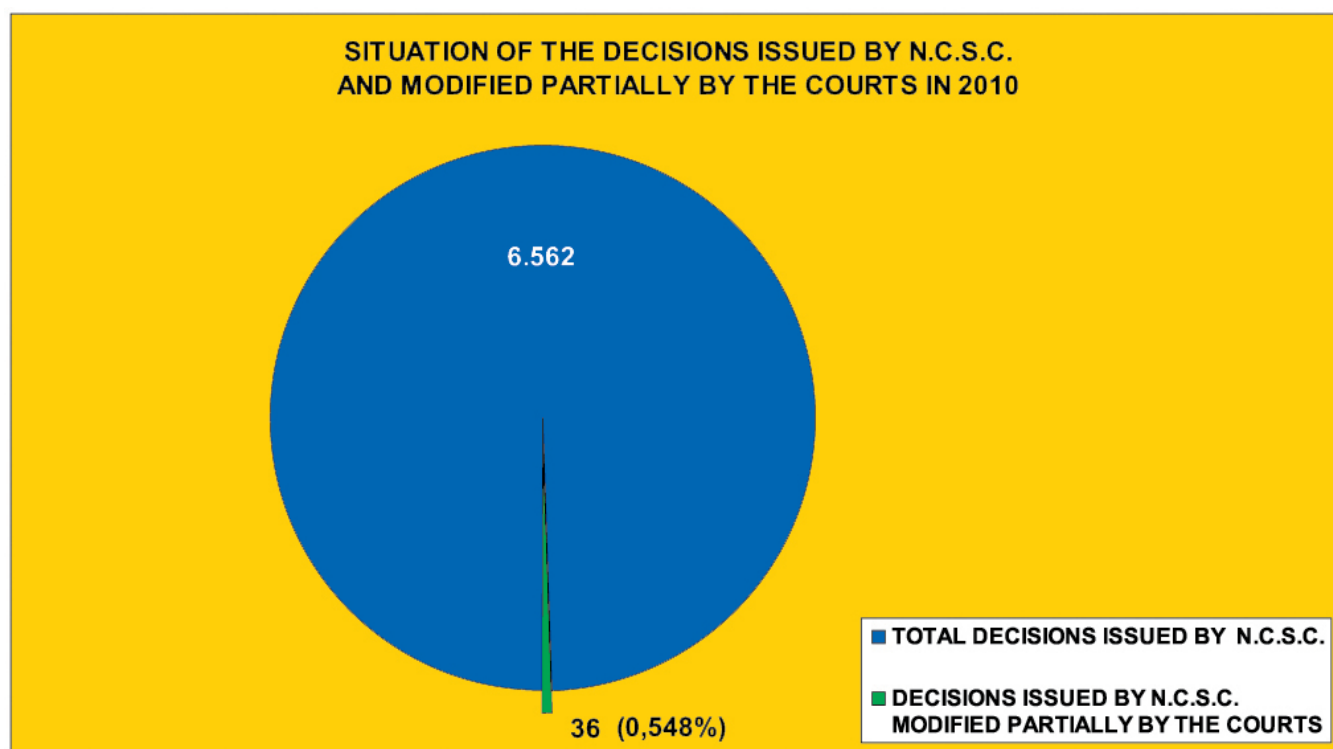


Fig. 21 – Number of decisions modified partially by courts



CHAPTER 10

SITUATION OF THE COMPLAINTS FORMULATED BY THE ECONOMIC OPERATORS / CONTRACTING AUTHORITIES AGAINST N.C.S.C. DECISIONS

Continuance of solving by the Council of the complaints formulated by the economic operators, **in conformity with article 281, paragraph 1 from the G.E.O. no 34/2006, modified and completed through G.E.O. no 76/2010, the Council's decisions regarding the complaints solving can be challenged with a complaint at the judicial court provided in article 283 paragraph 1 within the same normative act, within 10 days from communication, for reasons of illegality as well as for groundlessness.** The persons that can initiate a complaint against NTSC's decisions are either the contracting authority, one/many more economic operators participants in a procedure, either the contracting authority together with one or more economic operators involved in a public procurement procedure. For this reason, **against a decision issued by the N.C.S.C. sometimes more complaints are registered seldom at the courts.**

As we had stated in CHAPTER 5, within 1 January – 31 December 2010, N.C.S.C. has solved a number of 8.070 files.

Continuance of the activity of solving complaints carried out by N.C.S.C. in 2010, on the role of judicial courts a number of 984 complaints have been formulated, however from these only 155 (1,920% from the total number of solved files) have been admitted.

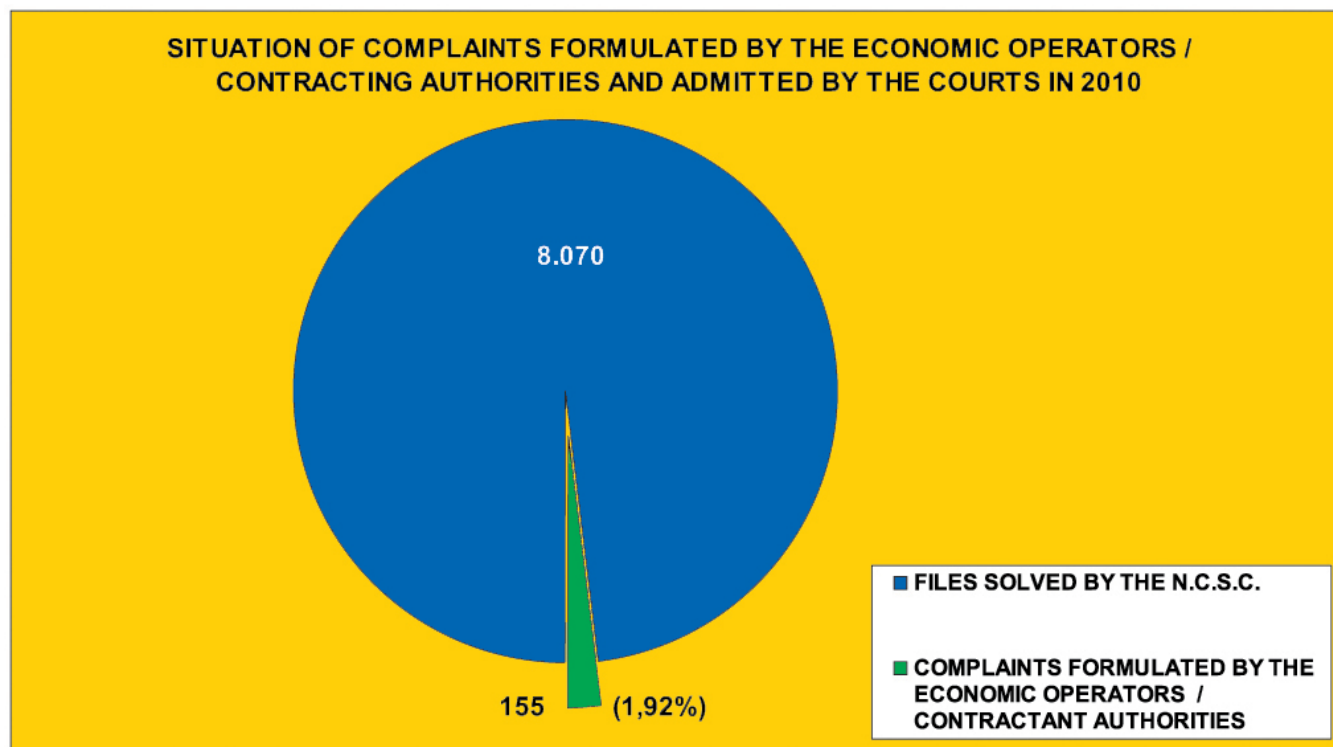


Fig. 22 - Number of complaints admitted by the courts



Practically, if we subtract from the total number of decisions issued by the N.C.S.C. starting the moment of its foundation and until 31 December 2010 (24.654 decisions) that of the challenged decisions with complaint to the Appeal Court, admitted and modified (partially / annulled) (431 decisions), we observe that N.C.S.C. has succeeded the performance to issue in the specific interval 24.223 decisions which have remained permanent and irreversible (98,252% from the total of issued decisions).



CHAPTER 11

N.C.S.C. PARTICIPATION AT EVENT DEDICATED TO PUBLIC PROCUREMENT

Preoccupied by transparency increase, competitiveness and effectiveness on the public procurement market, but also for the promotion of the best practices at European level and the dissemination of its own experiences in the area towards institutional partners, THE NATIONAL COUNCIL FOR SOLVING COMPLAINTS has granted in 2010 a special priority to the activity of representation at national and European level.

The first major event in 2010 to which N.C.S.C. has participated was the **seminar called “Modifications for the legislations from the public procurement area” organized on 27 January by our institution in cooperation with A.M.C.H.A.M. Romania (Romanian-American Chamber of Commerce in Bucharest)**, where a record number of inland companies with American capital or mixed capital (Romanian-American), as well as representatives of the Government General Secretary, A.N.R.M.A.P. and U.C.V.A.P.

Subsequently, within **27 – 28 January 2010, N.C.S.C. was invited to participate**, alongside A.N.R.M.A.P., Authority for Coordination of Structural Instruments, National Management Centre for the Informational Society, Project Management Units, S.E.A.P., Ministry of Regional Development and Tourism, **to the “Annual Reunion of the Management Authority with the representative of the European Commission”.**

On **6 May 2010, N.C.S.C. participated at the “Annual Conference of Public Procurement”**, organized by the Expert Audit Group company – editor of the Public Procurement Magazine. Within the respective event, where specialist in the area of public procurement have participated but also officials of some institutions involved in this area (Romanian Mercantile Exchange, A.N.R.M.A.P., U.C.V.A.P. etc), the representatives of Council have supported the presentation with the theme **“What can and must do the legislator and contracting authorities to reduce the number of contesting procedures”.**

Aware of the necessity of preventing and discouraging anti-competitive practices in the public auctions area, the **N.C.S.C. representatives have signed on 14 June 2010, two Cooperation Protocols with the Council of Competition and with the National Authority, to Regulate and Monitor the Public Procurement (A.N.R.M.A.P.). The respective protocols** sealed by Mister Lehel - Lorand Bogdan – president of N.C.S.C., Missis Cristina Trăilă - A.N.R.M.A.P. chairman and Mister Bogdan Chirițoiu – Council of Competition president, **have created the general frame through which these three institutions have proposed for themselves to coordinate the actions for unitary application of the specific legislation as well as that of the competitor area, in view of identifying potential tricked auctions which can make possible the award of some contracts despite the existence of some obvious interest conflicts amongst the contracting authority and several economic operators or of some unfair competition as a result of formation of monopoly amongst several economic operators.**

The cooperation of these three institutions is due to concretize in 2011 by founding a “Module of Tricked Auctions”, which will constitute a working instrument axed on the rapid exchange of information amongst the experts designated by these three institutions. The data base which will result following this exchange of information amongst the experts of the modules



will be managed by the Auction and Petitions Direction within the Competence Council, which will assure the priority of action, according to the impact on the final consumer.

Due to the successful credibility on the market of public acquisition, N.C.S.C. was invited to participate in **16 June 2010**, at the **seminary with the theme „Public procurement and infrastructure and Transparency, problems and approaching some solutions”, organized by the Commercial Office of the Austrian Embassy in Bucharest**. The event has rejoiced by the participation of 47 representatives of some well known Austrian companies present in our country and of some public institutions with attributions in the public procurement area.

The main event of the year was constituted by the organization, in 6 October 2010, under the patronage of N.C.S.C., the seminary called “PUBLIC PROCUREMENT – DETERMINED STAGE IN ABSORBING STRUCTURAL AND COHESION EUROPEAN FUNDS, INTEGRATED ACTIONS OF THE RESPONSIBLE INSTITUTIONS”. The event, to which have participated Lorand – Lehel Bogdan – president N.C.S.C. Cristina Trăilă – president A.N.R.M.A.P., Ștefan Ciobanu – general director of the Authority for Coordinating Structural Instruments, Ionuț Damian – President of the Management National Centre for the Informational Society, but also representatives of the Projects Management Units and of S.E.A.P., had as purpose identification and correction of main problems which blocks the absorption of structural and cohesion European funds.

At the end of **November 2010**, **N.C.S.C. was invited to participate, at A.N.R.M.A.P. headquarter, to the launching of the program “Evaluation of the public procurement system in Romania”, project developed by the European Commission through the General Direction of Regional Politics, in cooperation with Deloitte company.**

In the same period N.C.S.C. has also been invited to participate at the seminary called „Modifications of legislation in the public acquisition area”, organized by the NNDKP company.

Not last, N.C.S.C. has participated on 7 December 2010 at the Final Conference of technical assistance project developed by U.C.V.A.P., event to which officials from the Ministry of Finance, A.N.R.M.A.P., U.C.V.A.P., but also representatives of some Management Authorities and contracting authorities in Bucharest and Ilfov county.



CHAPTER 12

N.C.S.C. RELATIONS WITH MASS – MEDIA, WITH THE GENERAL PUBLIC AND WITH THE OFFICIAL AUTHORITIES IN THE PUBLIC PROCUREMENT AREA

From the point of view of the relation with mass-media and with the general public, the activity developed by N.C.S.C. in 2010 has concretized in an interactive approach, meant to guarantee institutional transparency.

Besides the supplied answers in accordance to Law 544/2001 regarding free access to public interest information requested by journalists from the central and local press, the institution has supplied also a series of points of view and press communications with the purpose of correctly inform the public opinion, the result being the appearance in mass-media of some articles targeting the public procurement system and the institutions activity.

Besides, the Office of Information and Public Relations within N.C.S.C. has been periodically elaborating newsletter concerning the activity of the institution, the document being put at the journalist's disposal as well as to the general public, both by publishing it on the institution's website (www.cnsc.ro), as well as throughout e-mail, at request.

In 2010, according to the attribution, the Information Office and Public Relations within N.C.S.C. was preoccupied by organizing and managing the webpage of the institution, as well as publishing the Official Bulletin of the NATIONAL COUNCIL FOR SOLVING COMPLAINTS.

Concerning the number of punctual requests that have come on behalf of the mass-media, during 2010 the Information Office and Public Relations within N.C.S.C. has received in accordance to Law 544/2001 regarding free access to information of public interest, over 85 written requests formulated by the journalists or by several physical persons.

Regarding N.C.S.C. relation with the official institutions, a thing has to be stated, that our institutions was and is interested in stability and coherent functioning of the inland public acquisition system. In this effect **N.C.S.C. transmits to the General Secretary of Romanian Government, every month, the situation regarding the evaluation terms registered by the contracting authorities at various projects in development on the market of public acquisition.**

Therewith, **in view of monitoring the market of public procurement, N.C.S.C. renders throughout electronic mail (e-mail), weekly towards A.N.R.M.A.P. and U.C.V.A.P. – based on some cooperation protocols closed with both institutions – the situation of the decisions issued by the Council, as well as retrieval measurements disposed as a result of complaints (files) formulated by economic operators.**

To increase institutional transparency N.C.S.C. has initiated in 2010 a project in view of developing an electronic system of randomly dispersing the complaints (files), similarly to the method of dispersing at the judicial courts level. The respective project, approved by the authorities is next in being implemented at the institution's level, probably no later than 2011. The fact has to be remarked that **also currently the partitioning of complaints towards the counsellors of solving complaints is done randomly, however this is done manually.**

Still with the purpose of assuring a total transparency concerning the N.C.S.C. activity, the



institution's top management has initiated in 2010 a project to implement a new integrated IT system, which assumes the modernization of the informatics networks of the institution and mounting, at the Council's headquarter, of some informatics automated machines (info-kiosk), and with their help the economic operators, the general public and mass-media se will be able to stay informed at any moment, (including on-line accessing the Council's site) regarding the status of solving complaints formulated within the public procurement procedures.



CHAPTER 13

N.C.S.C. BUDGET

N.C.S.C. budget afferent to **year 2010** was in a total amount of **9.657.000 RON** and was distributed as it follows:

- Budgetary provision for **current expenses: 9.487.000 RON**
From which:
 - ✓ **Staff expenses: 7.799.000 RON.**
 - ✓ **Goods and services: 1.688.000 RON.**
- Budgetary provision for **Equity expenses: 170.000 RON.**

N.C.S.C. budget detailed on titles and budgetary chapters is presented in **ADDENDUM no. 1**

ADDENDUM no. 1

CONSILIUL NATIONAL PENTRU SOLUTIONARE A CONTESTATIILOR



Buget 2010 - actualizat

Cod	Denumire indicator	BUGET ACTUALIZAT 13/12/2010	din care			
			Trim I	Trim II	Trim III	Trim IV
5000	TOTAL BUGET	9.657	2.861	2.635	2.790	1.371
01	CHELTUIELI CURENTE	9.487	2.861	2.526	2.729	1.371
10	TITLUL I CHELTUIELI DE PERSONAL	7.799	2.436	1.976	2.316	1.071
20	TITLUL II BUNURI ȘI SERVICII	1.688	425	550	413	300
70	CHELTUIELI DE CAPITAL	170	0	109	61	0
71	TITLUL XII ACTIVE NEFINANCIARE	170	0	109	61	0
5001	CHELTUIELI - BUGET DE STAT	9.657	2.861	2.635	2.790	1.371
01	CHELTUIELI CURENTE	9.487	2.861	2.526	2.729	1.371
10	TITLUL I CHELTUIELI DE PERSONAL	7.799	2.436	1.976	2.316	1.071
20	TITLUL II BUNURI ȘI SERVICII	1.688	425	550	413	300
70	CHELTUIELI DE CAPITAL	170	0	109	61	0
71	TITLUL XII ACTIVE NEFINANCIARE	170	0	109	61	0
5101	AUTORITĂȚI PUBLICE ȘI ACȚIUNI EXTERNE	9.657	2.861	2.635	2.790	1.371
01	CHELTUIELI CURENTE	9.487	2.861	2.526	2.729	1.371
10	TITLUL I CHELTUIELI DE PERSONAL	7.799	2.436	1.976	2.316	1.071
1001	Cheltuieli salariale în bani	6.150	1.916	1.532	1.860	842
100101	Salarii de baza	5.026	1.325	1.345	1.590	766
100103	Indemnizație de conducere	8	8	0	0	0
100104	Spor de vechime	48	48	0	0	0
100106	Alte sporuri	416	134	100	140	42
100108	Fond de premii	351	351	0	0	0
100109	Prima de vacanță	226	16	80	130	0
100112	Indemnizații plătite unor persoane din afara unitatii	3	0	3	0	0
100113	Indemnizații de delegare	8	4	4	0	0
100130	Alte drepturi salariale în bani	64	30	0	0	34
1003	Contributii	1.649	520	444	456	229
100301	Contributii de asigurari sociale de stat	1.251	398	323	332	198



Cod	Denumire indicator	BUGET ACTUALIZAT 13/12/2010	din care			
			Trim I	Trim II	Trim III	Trim IV
100302	Contributii de asigurari de șomaj	31	10	9	9	3
100303	Contributii de asigurari sociale de sanatate	315	99	94	97	25
100304	Contributii de asigurari pentru accidente de munca si boli profesionale	12	3	3	3	3
100306	Contributii pentru concedii si indemnizatii	40	10	15	15	0
20	TITLUL II BUNURI ȘI SERVICII	1.688	425	550	413	300
2001	Bunuri si servicii	1.423	372	455	343	253
200101	Furnituri de birou	62	4	50	8	0
200102	Materiale pentru curatenie	11	2	3	4	2
200103	Incalzit, iluminat si forta motrica	110	60	24	12	14
200104	Aps, canal si salubritate	29	6	7	12	4
200105	Carburanti si lubrifianti	26	23	0	3	0
200106	Piese de schimb	31	5	10	11	5
200108	Posta, telecomunicatii, radio, tv, internet	415	105	128	107	75
200109	Materiale si prestari de servicii cu caracter functional	179	35	86	38	20
200130	Alte bunuri si servicii pentru intretinere si functionare	560	132	147	148	133
2002	Reparatii curente	35	0	20	15	0
2005	Bunuri de natura obiectelor de inventar	48	5	10	5	28
200601	Deplasari interne, detasari, transferari	8	0	3	3	2
200602	Deplasari in strainatate	15	14	1	0	0
2011	Carti, publicatii si materiale documentare	7	3	3	1	0
2012	Consultanta si expertiza	12	0	4	8	0
2013	Pregatire profesionala	33	0	20	13	0
2014	Protectia muncii	40	6	9	9	16
2030	Alte cheltuieli	67	25	25	16	1
203002	Protocol si reprezentare	2	0	0	1	1
203030	Alte cheltuieli cu bunuri si servicii	65	25	25	15	0
70	CHELTUIELI DE CAPITAL	170	0	109	61	0
71	TITLUL XII ACTIVE NEFINANCIARE	170	0	109	61	0
7101	Active fixe	170	0	109	61	0
710102	Masini, echipamente si mijloace de transport	60	0	54	6	0
710103	Mobilier, aparatura birotica si alte active corporale	60	0	10	50	0
710130	Alte active fixe	50	0	45	5	0
5101	Autoritati executive si legislative	9.657	2.861	2.635	2.790	1.371
510103	Autoritati executive	9.657	2.861	2.635	2.790	1.371

Directia Economica,