

„None of the main issues which humanity is facing will be resolved without access to information“ – Christophe Deloire, Secretary General of Reporters without borders



FUNCTIONAL ANALYSIS

Agency for the Protection of the Right to Free Access to Public Information

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EXECUTIVE SUMMARY

This functional analysis was prepared for two reasons. First, every body in the public sector is obliged to conduct its own functional analysis in accordance with Article 17 paragraph-4 of the Law on Public Sector Employees (Official Gazette of the Republic of Macedonia No. 27/2014, 199/2014, 27/2016, 35/ 2018 etc., Gazette of the Republic of North Macedonia number 198/2018 143/2019 and 14/2020). The Agency for the Protection of the Right to Free Access to Public Information (hereinafter: the Agency or AFAPI) is a public body, that is, an institution in the public sector, which is why the implementation of a functional analysis within its framework is a legal imperative. Second, the Agency appears as the successor of the Commission for the Protection of the Right to Free Access to Public Information, or, in other words, it is a question of an authority created through a recently implemented transformation. Consequently, the implementation of a functional analysis appears as the first prerequisite for successful functioning in the future.

Namely, the purpose of this functional analysis is to present the current picture of the Agency's operations, that is, to give recommendations that would improve its overall functioning in the future. In that context, this functional analysis appears as a tool for managing changes in the Agency. It highlights the positive aspects of the Agency's functioning, but also outlines the upcoming (and necessary) efforts aimed at improving its performance.

Having in mind such a purpose of the functional analysis, it focuses on: (*) the purpose of the Agency's existence; (*) strategic planning within the Agency; (*) the organizational capacities of the Agency; (*) the management of the Agency; (*) internal communication and the method of division of tasks within the Agency itself; (*) communication with other state authorities and organizations; (*) communication with citizens; (*) the spatial conditions for the Agency's operation; (*) technical resources and the like.

It is necessary to point out that the proper functioning of the Agency has far-reaching consequences in terms of the development of the Republic of North Macedonia¹ in general. Namely, the Agency represents an extremely significant link in the institutional order of the state which can significantly influence the transparency and accountability of the authorities in general, but also the raising of citizens' awareness. Greater awareness, on the other hand, in itself implies better policies – built in an inclusive process – but also greater successes in the combat against corruption.

I. METHODOLOGY OF FUNCTIONAL ANALYSIS

When determining the methodology for making this functional analysis, we started from its basic purpose. As a change management tool, it should present the current picture of the Agency's operations, that is, result in recommendations that would improve its overall functioning in the future. From there, the process of preparing the functional analysis took place in six stages: (*) collection of documents; (*) implementation of questionnaires; (*) study of the documents and the results of the questionnaires; (*) initial conclusions; (*) checking of initial conclusions (double-checking); (*) development of recommendations for improving the operation of the Agency according to key parameters.

Within the framework of the first phase, a review of the entire documentation that is relevant in the context of the implementation of the functional analysis was carried out. Some of the documents were publicly available, while some were requested by the Agency's administrative service. These documents included:

- laws;
- by-laws (rules for the organization and systematization of workplaces and others);
- strategic planning documents;
- job reports;

¹ In this functional analysis, the names "Republic of North Macedonia" and "Republic of Macedonia" are used in parallel, considering the fact that some of the cited legal decisions and events were passed/happened before the entry into force of Amendment XXXIII to the Constitution of the Republic of Macedonia (Official Gazette of the Republic of Macedonia No. 6/2019).

- budgets;
- financial report;
- title deeds;
- sketches of the Agency's premises and
- other documents.

Within the framework of the second phase, a questionnaire was prepared with a total of 95 questions that referred to various aspects of the Agency's operations (independence, financial capacities, human capacities, the use of information and communication technologies, etc.). The questionnaire was intended for the director, deputy director and employees of the Agency. Considering that the functional analysis was carried out during a period when a state of emergency was declared in the country,² questionnaires were administered electronically.

The third and fourth phases of the research were organically linked; namely, they represented the study of all the documents and the responses from the questionnaires and the drawing of conclusions. The conclusions drawn were once again checked within the fifth phase of the preparation of the functional analysis, in order to prepare this document at the very end, which also contains the recommendations for improving the situation in the Agency, or rather its functioning.

The recommendations from this functional analysis are classified according to their urgency. Thus, the Agency can single out the measures and activities that are more urgent and that should be implemented in a period not longer than 18 months.

II. COMMON KNOWLEDGE AS THE BACKGROUND OF FUNCTIONAL ANALYSIS

1. General notes on the right to free access to public information

The right to free access to public information is projected in Article 16, paragraph 3 of the Constitution of the Republic of North Macedonia.

Frame no. 1 – Article 16 of the Constitution of the Republic of North Macedonia

Freedom of belief, conscience, thought and public expression of thought is guaranteed.

Freedom of speech, public performance, public information and the free establishment of institutions for public information are guaranteed.

Free access to information, freedom to receive and transmit information is guaranteed.

[...]

²Decision to determine the existence of a state of emergency published in Official Gazzete No. 68/2020.

The right to free access to public information is, in fact, one of the basic civil rights in any democratic legal state.³ In other words, the right of citizens to be informed about the happenings in and outside their country, but also about the work of public bodies, is a basic feature of the democracy of a society. The right to free access to public information is directly related to the transparency of the state and its institutions.

Only a state that is transparent can be both responsible and accountable (alluding to the three branches of government – legislative, executive and judicial). In addition, public bodies could be service-oriented to citizens, only if the data on their operations are also publicly available. Public funds, on the other hand, could be used in accordance with the law and in the interest of the entire society only if citizens can gain insight into the budget revenues and expenditures of all entities that have public powers, that is, perform public activities. As the world's leading authors point out: "[t]he transparency is a tool that facilitates the evaluation of public institutions [...] transparency is a powerful tool for building trust in institutions among citizens [...]".⁴

However, the provision of Article 16, paragraph 3 of the Constitution does not offer an answer to the question of what exactly the right to free access to public information means. In this regard, there are also conflicts in world literature. Does the right to free access to public information imply:

- the right of citizens to request information about the operation of public bodies, i.e. the obligation for corresponding institutions to provide that data (passive transparency), or
- the obligation of public authorities not only to submit data that they have at their disposal at the request of citizens, but also to independently publish them in an easily accessible way (active transparency).

The answer lies in Macedonian legislation that follows international trends and initiatives. The basic regulation that regulates and operationalizes this constitutionally-guaranteed right is the Law on Free Access to Public Information. The first Law on Free Access to Public Information was adopted in 2006 (Official Gazette No. 13/2006, 86/2008, 6/2010, 42/2014, 148/2015, 55/2016 and 64/2018 and "Official Gazette of the Republic of North Macedonia" No. 98/2019). According to this law, the Commission for the protection of the right to free access to public information was, as shown in the following text, the predecessor of the Agency. In 2019, the Assembly of the Republic of North Macedonia passed the new Law on Free Access to Public Information (Official Gazette No. 101/2019), which formally came into force on November 30,

³More on the transparency definition: Michener G., Bersch K. (2013). Identifying transparency, Information Policy 18 (2018) 233-242, available at: <https://pdfs.semanticscholar.org/4ac7/5190784e6eec337d61ce86d45718a910bfaf.pdf> (last access on 08.04.2020).

⁴See: Bellver A., Kaufmann D. (2005). Transparenting Transparency: Initial Empirics and Policy Adaptations, World Bank Policy Research Working Paper, available at: https://www.google.com/search?q=Transparenting+Transparency%3A+Initial&rlz=1C1GGRV_enMK758MK758&oq=Transparenting+Transparency%3A+Initial&aqs=chrome..69i57.822j0j7&sourceid=chrome&ie=UTF-8 (last access on 08.04.2020).

2019. However, this regulation was not actually applied until December 26, 2019, when the director and deputy director of the Agency were elected; more precisely, until the transformation of the Commission for the Protection of the Right to Free Access to Public Information in the Agency is implemented (which was tied to the appointment of a director and deputy director by the Assembly).

The reason for the adoption of a new Law on free access to public information is found in the proposal for a law submitted to the Parliament, where it was stated:

"[I]f the Law on Free Access to Public Information incorporates basic principles on which the right to free access to public information is based, there is incomplete and inconsistent application of the Law, limited transparency of institutions and incomplete realization of the right to natural and legal persons for access to public information [...]"⁵

According to the provisions of the Law on free access to public information, the corresponding right should be interpreted much more broadly than the obligation of public authorities to provide data to citizens - when it is requested by them. Thus, the right of free access to public information includes:

- the obligation of public authorities to regularly publish numerous information and documents on their websites;
- the obligation of public authorities to actively help the parties, that is to facilitate their access to the desired information;
- prohibition of charging costs for access to information, with the exception of material costs for delivery of a transcript, photocopy or electronic record of given information;
- obligation to conduct a harm test in case there is a suspicion that a given data - which is essentially public - may harm personal data or other protected interests (classified information and the like, in accordance with Article 6 paragraph 1 of the Law on Free Access to Public Information). In such a case, the authority that decides on the request for free access to public information is obliged to carry out a kind of weighing between the protected interest (protection of personal data, classified information, etc.) and the public interest. Public interest is also defined in legal provisions.

Practically speaking, the Law on Free Access to Public Information from 2019 accepts a broader approach regarding the right to free access to public information, i.e, according to its provisions, public authorities in the Republic of North Macedonia have an obligation not only for passive transparency but and for active transparency, too. The provisions of the law will be

⁵See: <https://metamorphosis.org.mk/wp-content/uploads/2020/01/Strategija-za-transparentnost-MK.pdf> (last access on 08.04.2020), p. 20.

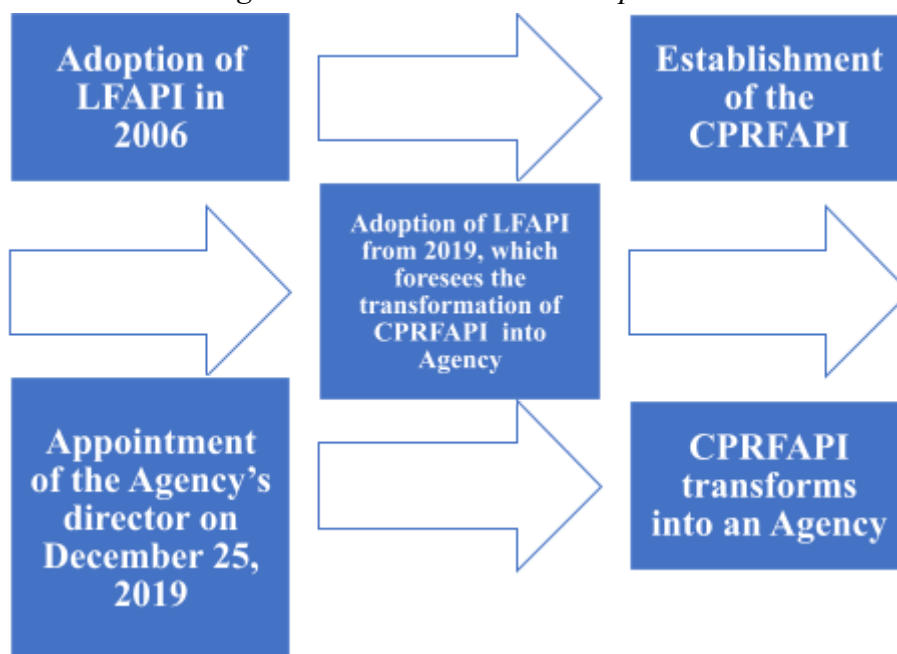
subject to processing in the following text, when the role of the Agency will be discussed in more detail.

2. The Agency for the Protection of the Right to Free Access to Public Information - historical development and role

One of the essential innovations in the Law on Free Access to Public Information of 2019 (hereinafter also used as an acronym: LFAPI), in view of its predecessor from 2006, is the transformation of the Commission for the Protection of the Right to Free Access to Public Information in a foreign authority (hereinafter: The Commission) – The Agency. In other words, the Agency, as an authority, is the successor of The Commission. This transformation was carried out in accordance with Article 43, paragraph 2 and paragraph 3 of the Law on Free Access to Public Information from 2019, based on the Decision of the Assembly of the Republic of North Macedonia on the appointment of the Director and Deputy Director of the Agency (Official Gazette No. 271/2019).

The agency took over all employees from CPRFAPI, as well as the objects, the archive, the material, technical, spatial and other resources that it had at its disposal. Bearing that in mind, within the framework of this functional analysis, a reference will be made, on several occasions, to the operation of CPRFAPI. This is necessarily due to the fact that a large part of the Agency's challenges originate from its predecessor.

Figure no. 1 – Historical development



The role of the Agency derives from the provisions of LFAPI. In Article 30, namely, its competences are foreseen.

Frame no. 2 – Article 30 (competencies of the Agency) of the LFAPI

The agency performs the following tasks:

- 1) conducts administrative proceedings and decides on appeals against the decision by which the holder of the information refused or rejected the request for access to information of the applicants,
- 2) takes care of the implementation of the provisions of this law,
- 3) prepares and publishes a list of information holders,
- 4) gives opinions on proposals for laws regulating free access to information,
- 5) develops policies and provides guidelines regarding the exercise of the right to free access to information,
- 6) conducts misdemeanor proceedings through the Misdemeanor Commission, which decides on misdemeanors in accordance with the law,
- 7) undertakes activities related to the education of the holders of information about the right of free access to the information they have,
- 8) cooperates with the holders of information regarding the realization of the right of access to information,
- 9) prepares an annual report on its work and submits it to the Assembly of the Republic of North Macedonia,
- 10) carries out works of international cooperation related to the execution of the international obligations of the Republic of North Macedonia, participation in the implementation of projects of international organizations and cooperates with the authorities of other countries and institutions in the field of free access to public information,
- 11) promotes the right to free access to public information, and
- 12) performs other tasks determined by this and other laws.

Each of these competences will be explained in detail in the following text. On this occasion, for a better understanding of the role of the Agency, we will divide them all into several functions.

Frame no. 3 – Functions of the Agency

- Development of policies for transparency and improvement of legislation
 - o Article 30, Paragraph 1, p. 2, 4, 5 and 10
- Keeping track of the scope of LFAPI
 - o Article 30, Paragraph 1
- Education and raising public awareness about the right to free access to public information

- o Article 30, Paragraph 1, p. 7, 8 and 11
- Conducting special administrative (including misdemeanor proceedings)
 - o Article 30, Paragraph 1, p. 1 and 6

The idea behind the division of all the competences of the Agency into several functions is to show that it should not only monitor the public authorities (which it includes in its list of holders of a public information, which will be discussed in the next chapter) in terms of whether they respect the right to free access to public information, but also to carry out educational and other activities aimed at increasing the transparency of the government (including legislative, executive and judicial) in the country in general. In fact, the Agency also has a key role in raising awareness among citizens about their right to access information *vis à vis* the obligation for transparent operation of the institutions. It is necessarily taken into account when evaluating the functionality of the Agency. Namely, it can be valued as effective and efficient only if it can successfully perform all its functions.

III. LEGAL FRAMEWORK OF SIGNIFICANCE FOR THE OPERATION OF THE AGENCY FOR FREE ACCESS TO PUBLIC INFORMATION

1. Law on free access to public information

As already stated, the basic regulation that regulates the right to free access to public information, and hence the work of the Agency, is the Law on Free Access to Public Information from 2019. The purpose of this law is to further operationalize the provision of Article 16 paragraph 3 of the Constitution. In order to avoid repetition with the previous text, in the following, only a review of the Agency's essential competences will be made. At the same time, the order will be changed from the one in LFAPI in order to achieve a better understanding of the provisions.

1.1. Competencies arising from the Law on Free Access to Public Information

1.1.1 Determination of the list of information holders

The law on free access to public information with its provisions obliges all those who fall under the term "holder of information". In the previous text, it was mentioned on several occasions that essentially all public authorities appear as holders of information. It is due to the definition contained in Article 3, Paragraph 1, p. 1 of the Civil Code.

Frame no. 4 – Legal definition of information holder

"Holders of information" are the bodies of the state government and other bodies - and organizations established by law, the bodies of the municipalities, the city of Skopje and the municipalities in the city of Skopje, institutions and public services, public enterprises, legal and natural persons exercising public powers established by law and activities of public interest and political parties in the area of income and expenditure [...]

It is evident that the legal definition of a holder of information is very broad, i.e., it covers, practically speaking, all public bodies but also private entities that exercise public powers. The law on access to public information, in fact, goes so far as to explicitly include political parties under the term "holder of information" in terms of income and expenditure.

However, the breadth of such a legal definition can lead to a dilemma in practice, that is, to doubts as to whether a given entity is or is not a holder of the information. Of course, it would be a very serious challenge both for public authorities and institutions, as well as for citizens (who could not always predict exactly which subject is the holder of information and consequently demand some data from him based on the provisions of the Civil Code).

That is why one of the competencies of the Agency is to prepare and publish (on its website) the list of holders of public information (Article 5, Paragraph 1 of the Law on Free Access to Public Information).

Although this competence of the Agency may seem secondary, that is, as a legal obligation of a technical nature, it should be taken into account that it is one of its essential tasks. The reason for that is that the registration of a given entity in the list of information holders will also mean that it falls under the regime of the Law on free access to public information. On the contrary, the fact that a given entity was left out of the list of holders of public information may be the reason for its failure to act in accordance with the LFAPI. In other words, the entry of a given subject in the list of holders, *in fact*, has a constitutive character for them – from that moment on, that entity is obliged to act in accordance with the provisions of the Law on Free Access to Public Information. The list of information holders is subject to constant updating by the Agency, and if a certain legal entity for certain reasons is not recorded in the List at the given moment, it does not mean that it is not subject to the provisions of the Law.

The agency prepares the list of information holders based on the LFAPI. At the same time, it is obvious, from the legal definition, that the Agency will include the ministries, the bodies in their composition, other bodies of the state administration, independent state bodies, courts, and the like in the list of holders. The dilemmas will arise when the question arises regarding which private entities exercising public powers will become part of the list. On the one hand, it is undoubtedly clear that the list of information holders will include the joint stock companies, which are fully under state holdership. On the other hand, doubts may arise as to whether some commercial companies are holders of public information, such as

- Makedonski Telekom AD Skopje – a joint-stock company in which the Government of the Republic of North Macedonia owns 34.8% of the shares and which performs activities

in the field of telecommunications (which are undoubtedly part of public activities, i.e. activities of public interest);

- The thermal energy distribution company "Heat distribution BALKAN ENERGY DOOEL" Skopje - a limited liability company that holds licenses for energy activity-distribution of thermal energy in the area of the city of Skopje, i.e. in parts of the municipalities of Aerodrom, Gazi Baba, Kisela Voda, Centar, Karposh, and Chair. Such activity is undoubtedly an activity of public interest.

These two companies are cited as an example, considering that they are not included in the list of information holders available on the Agency's website when drafting this functional analysis, but there are other examples.

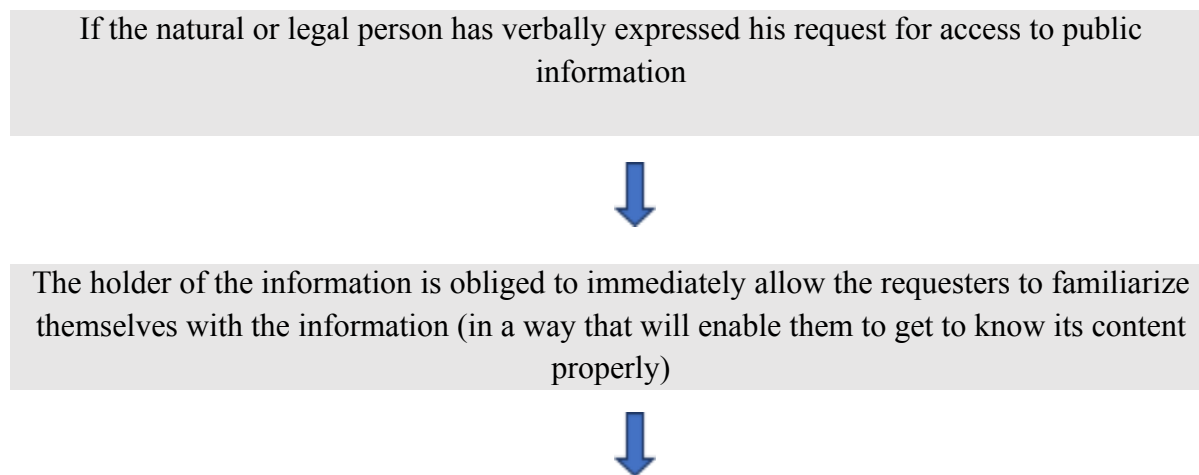
In that direction, the Agency should accept a broader approach in the spirit of LFAPI and include all subjects in the list of information holders - public bodies, i.e. state government bodies, public and private institutions (since the institutions perform public services), shareholders companies and other private entities that are owned by the state, but also all other entities that perform activities of public interest.

1.1.2. Decision-making on appeals for exercising the right to free access to information

According to the Law on free access to public information, every holder of public information is obliged, in a special administrative procedure (*a special law*), to act on requests for access to public information.

In that direction, the procedure for access to public information occurs as shown below.

Figure no. 2 - Procedure for access to public information upon verbal request



If the holder is not able to enable the requesters to immediately familiarize themselves with the information they are looking for, the entity is obliged **within five days at the latest** to enable familiarization through inspection, that is, to provide a transcript, photocopy or electronic record. Also, if the holder does not have the information, the holder should direct the requester to the right holder of the information.

Alternatively,

If the holder of the information cannot respond immediately, the Request is treated as a written request and the holder of the information is obliged to make a decision with which the holder responds positively or negatively to the request for free access to public information and delivers it to the requester.

A decision is also made in the case when the holder submits the requested information, but the holder has some kind of objection regarding the information or the way in which it was possible to get acquainted with it.



The applicant has the right to appeal against the decision to the Agency within 15 days of the receipt of the Decision.



The agency decides on the appeal within 15 days from the day of receipt of the appeal. If the Agency does not make a decision in the second instance within 15 days, and it does not do so within seven days of the repeated request (for making a decision on the appeal), the applicant can initiate an administrative dispute.

According to the Law on free access to public information, requests for access can be submitted in written, that is, electronic form. The access procedure in that case takes place as shown.

Figure no. 3 - Procedure for access to public information upon written / electronic request

The natural or legal person has the right to submit a written or electronic request for access to public information. The request is submitted on a form prescribed by the Agency or in another form.



If the request is incomplete, the holder requests its completion within three days. If the request for addition is not acted upon, that is, the request does not contain all the necessary elements even after the addition, the holder of the information makes a decision to reject the request.



The applicant can appeal against the decision rejecting the application within 15 days of its delivery. The Agency acts on the complaint.

Alternatively,

The holder of the information responds to the request within 20 days, making a positive or negative decision (with the possibility of allowing partial access). This term can be extended up to 30 days if it is necessary to provide the information due to its volume, etc. If the request is rejected or partial access is allowed, the requester has the right to appeal to the Agency within 15 days of receipt of the decision.



The applicant has the right to appeal against the decision to the Agency within 15 days of receiving it.



The agency decides on the appeal within 15 days from the day of receipt of the appeal. The information holder is obliged to implement the Agency's secondary decision within 15 days and notify the Agency thereof. If, on the other hand, the Agency does not make a decision in the second instance within 15 days, and it does not do so within seven days of the repeated request (for making a decision on the appeal), the applicant can initiate an administrative dispute.

According to the aforesaid, decision-making based on appeals is one of the Agency's basic functions. At the same time, the employees of the Agency need to know extensively not only the procedural provisions of the Law on Free Access to Public Information but also the provisions of the Law on General Administrative Procedure published in the Official Gazette of the Republic of North Macedonia no. 124/2015 (whose provisions apply to all issues not

otherwise regulated by the Law on Free Access to Public Information). For illustration, we will offer a hypothetical situation:

- A natural person submits a written request for access to public information to the Ministry of Internal Affairs. The Ministry refuses access to the information. Although the requested information may harm personal data, and the Ministry of Internal Affairs conducted a harm test, the refusal decision does not explain. In such a case, the agency should, in accordance with the provisions of Article 88 Paragraph 4 of the Law on the General Administrative Procedure, annul the first-level decision due to a formal deficiency - lack of justification.

In addition, taking into account the obligation of the holders of information to notify the Agency of the action on its secondary decisions (when it decided on appeal), it would be useful for the Agency to introduce a record of such notifications, which would take care of which of the holders of information acted according to the decisions of the Agency made in the second instance (and the instructions in them), and who did not - after which he will resort to misdemeanor powers.

1.1.3. Offense powers of the Agency for the Protection of the Right to Free Access to Public Information

Pursuant to the Law on Free Access to Public Information from 2019, the Agency acquires misdemeanor powers, i.e. the duty to conduct misdemeanor proceedings against the holders of information. Such authorization did not exist for the predecessor of the Agency, that is, the CPRFAPI did not lead misdemeanor proceedings and did not impose misdemeanor sanctions. Consequently, this competence of the Agency can be a challenge in its operation in the coming period.

The LFAPI contains several misdemeanor provisions in Articles 38 and 39. We list those provisions below.

Table no. 1 – Offenses provided for in the LFAPI

Offense	Article of LFAPI	Fine
The person in power or the managing person of the holder of the information did not designate an official person to mediate the right of free access to public information and did not provide information to the public about the official person.	38	500 Euro

<p>Consequently, two alternatives are possible: (*) the holder of information does not have a person to mediate information; (*) a person has been appointed to mediate information, but no information has been published about it.</p>		
<p>The official person for mediating information with the holder of information:</p> <ul style="list-style-type: none"> <input type="checkbox"/> acts contrary to Article 6, Paragraph 3 of the LFAPI, that is, it refuses access to public information without conducting a harm test; <input type="checkbox"/> does not regularly maintain and update the list of information at its disposal and does not publish it in an appropriate manner, in accordance with Article 9 of the LFAPI <ul style="list-style-type: none"> <input type="checkbox"/> Dilemma: Why is article 10 of LFAPI not mentioned in the misdemeanour provision, considering that the provision determines what information the holder should upload on their website; <input type="checkbox"/> does not indicate assistance in requesting the information in accordance with Article 11 of the LFAPI; <input type="checkbox"/> requested an explanation from the requester of the information contrary to Article 16, Paragraph 5 from LFAPI; <input type="checkbox"/> within the stipulated period of 20 days, i.e. 30 days, unreasonably denied access to the information; <input type="checkbox"/> does not keep records in accordance with Article 8, Paragraph 3 and Article 36, Paragraph 2 (in which it is determined what records the person should keep, that is, what should be contained in the annual report that the holder submits to the Agency); <input type="checkbox"/> charged access to the requested information contrary to Article 10, Paragraph 3 of LFAPI <ul style="list-style-type: none"> <input type="checkbox"/> Article 10 has only two paragraphs, and the obligation to provide free access is stipulated in the second paragraph; <input type="checkbox"/> will not implement the Agency's decision within 15 days of its receipt in accordance with Article 27, Paragraph 4 (we are talking about the situation in which the Agency decided on appeal in the second degree and ordered the holder to submit the information, the provision of which was once refused); <input type="checkbox"/> will not prepare an annual report and will not submit it to the Agency. 	<p>39</p>	<p>250 Euro</p>

For these violations, the procedure is conducted, and the misdemeanor sanctions are imposed by the Misdemeanor Commission within the Agency. LFAPI does not provide provisions for the composition of this commission, so on that occasion, the provisions of the Law on Misdemeanors (Official Gazette No. 96/2019) are applied, where in Article 55 Paragraph 2, it is provided that the members of the misdemeanor commission within the framework of the misdemeanor authority (in this case: the Agency) are authorized officials with an appropriate degree and professional training, of which at least one person is a law graduate with a passed bar exam.

The members of the misdemeanor commission within the Agency have a serious challenge of knowledge of the provisions of the Law on Misdemeanors. This is especially highlighted considering the complexity of the evidentiary procedure. Hypothetical examples are again offered for illustration:

- The requester of information submitted a report to the Agency in which he claims that the violation of Article 39 Paragraph 1 Paragraph 3 of the Law on Free Access to Public Information, which consists in not assisting the requester of information, was committed. On the other hand, the official for mediating information at the authority presents their claim that they acted entirely in accordance with Article 11 of the Law on Free Access to Public Information, i.e., that assistance was provided to the requester. A question arises as to how it will be proven whether the official, i.e. the holder of the information really provided assistance to the requester, that is, which means of evidence will be taken into account. In that direction, the need to know the provisions of the Law on Misdemeanors is evident.
- The requester of the information, who addressed the holder verbally later submitted a misdemeanor report to the Agency in which they claimed that the official for mediating information asked them for an explanation of the request contrary to the LFAPI. There is no particular need to point out that proving this offense is extremely difficult – especially if it is a question of verbal communication between the requester and the authorized person to mediate information with the information holder.

1.1.4. Control over the application of the Law on Free Access to Public Information

As was already shown in the previous remarks, the Law on Free Access to Public Information contains a relatively generic and broad provision according to which the Agency takes care of its implementation. The construction of this provision can lead to a dilemma regarding its meaning – does it have any practical implications, or is it just a general determination? What exactly would be involved in taking care of the implementation of the Law on Free Access to Public Information?

Hence, this provision is interpreted in correlation with the stated functions of the Agency, especially taking into account its didactic and educational role. In continuation, we will highlight a non-exhaustive list of examples of what activities could be carried out in order to fulfill this role by LFAPI:

First, the Agency could regularly inform the Government of the Republic of North Macedonia how far the bodies that answer to it act in accordance with the provisions of the Law on Free Access to Public Information, i.e. submit statistical data on a regular basis:

- how many requests for access to information the authorities - holders of information have received;
- how many complaints were filed with the Agency;
- what are the most common reasons for complaints;
- what are the average deadlines for acting on second-level decisions of the Agency;
- other data.

With that, the Agency would establish a partnership relationship with the Government of the Republic of North Macedonia (especially the minister without portfolio in charge of communications, accountability, and transparency, the General Secretariat - where according to the Government's Transparency Strategy⁶ the existence of a new organizational unit in charge of monitoring the transparency of the bodies responsible to the Government, as well as the Ministry of Information Society and Administration in the area of the implementation of the Open Data Strategy and the corresponding legislation is foreseen and would inform it about the work of the bodies that answer to the unit. If, for example, from the regular information that the Agency delivers to it, the Government of the Republic of North Macedonia notices that certain authorities are constantly practicing silence on the part of the administration or unfoundedly reject requests for access, it could hold responsible the official/head of that authority, and ultimately, the authorized person for mediation with information for not providing the information.

Secondly, the Agency could also undertake activities *vis à vis* citizens, that is, to inform them about the right to be informed about the work of the holders of the information. This implies the production of informational materials such as brochures, infographics, in part, even promotional videos with which the Agency will explain exactly what citizens can expect from the institutions in terms of free access to public information. In particular, attention should be paid to active transparency, specifically Article 10 Paragraph 1 of the Law on Free Access to Public Information. In addition, the Agency could conduct educational efforts (informational trainings) among the youngest - students in secondary schools and students in higher education institutions - in order to encourage their awareness.

Thirdly, the Agency can prepare, in cooperation with the academic public and citizens' associations, a commentary on the new Law on Free Access to Public Information which will be

⁶ See: https://vlada.mk/sites/default/files/dokumenti/strategii/strategija_za_transparentnost_mk.pdf (last access: 14.04.2020), p. 18.

published on its website, promoted through the channels of the non-governmental sector, but also submitted to the Government of the Republic of North Macedonia (especially to the minister without portfolio in charge of communications, accountability, and transparency and the General Secretariat - where, as stated, in accordance with the Government's Transparency Strategy⁷ the existence of a new organizational unit in charge of monitoring the transparency of the bodies that answer to the Government) and the Ministry of Information Society and Administration is foreseen.

Fourth, the key role in the implementation of the Law on Free Access to Public Information is played not by the officials and managers of the information holders themselves, but by the officials appointed for mediating public information. In that direction, namely, the Agency can prepare a training program for officials to mediate information and, according to it, enable an increase in the knowledge of LFAPI and its consistent application. In particular, it should be taken into account that among the holders of information, there is usually no person who exclusively performs the tasks related to free access to public information; on the contrary, the officials for mediating information are mostly administrative officers who are employed as associates for legal affairs, technical secretaries and the like. Hence, it cannot be expected that the primary interest of these administrative officers will be to follow the news in the field of access to public information.

Fifth, the Agency could publish on its website a section entitled "Frequently Asked Questions". It can publish the questions that were asked to the Agency by the holders of information, but also the interested physical and legal persons who contacted or intend to contact as information requesters. We show what that section would look like in the frame below.

Frame no. 5 – Example of "Frequently Asked Question" by authorized officials for mediating information with information holders

Question:

The same information requester submits an information request to my employer even though the document they are requesting was delivered to them only a few days ago. How should I act?

Response from the Agency:

According to Article 23 of the Law on Free Access to Public Information, you can inform the requester that the request has already been answered positively in the previous three months, which is why you refer them to the documents that have already been submitted. Namely, the holder of information is not obliged to resubmit the data that they have already submitted to a particular person - at their request - in the last three months.

⁷ See: https://vlada.mk/sites/default/files/dokumenti/strategii/strategija_za_transparentnost_mk.pdf (last access: 14.04.2020), p. 18.

By undertaking such efforts, the Agency could make a significant improvement in the work of the public bodies that are the holders of information, but also to an increase in the level of transparency in the Republic of North Macedonia in general.

In addition, it is expected that one of the essential terms for which the Agency will have to educate the citizens, but especially the holders of the information, is the Harm Test. We will address this issue in the next subsection.

1.1.5. Terms and provisions of the Law on Free Access to Public Information that cause or may cause difficulties in the implementation of the competences of the Agency for the Protection of the Right to Free Access to Public Information

The first concept that can cause difficulties in practice is the harm test. The Law on Free Access to Public Information defines it in Article 3 Paragraph 1, p. 6:

Frame no. 6 – Legal definition of the harm test

"The Harm Test" is a mandatory procedure carried out by the holder of the information, before refusing access in accordance with Article 6 paragraph 1 of this law [author's note: refusal of access to information due to the fact that (*) the information is classified, (*) it is about personal data, the disclosure of which would mean a violation of personal data, (*) it is about information, it would mean a violation of the confidentiality of the tax procedure; (*) it is about information acquired or compiled for an investigation, misdemeanour or misdemeanor procedure, for the implementation of administrative and civil procedure, the disclosure of which would have harmful consequences for the procedure or (*) information that threatens industrial or intellectual property rights], and with which it checks the consequences on the interest that is being protected, that is, the public interest that would be achieved by publishing the information.

There is no doubt that the harm test will lead to frequent dilemmas in practice, especially among the holders of information, and thus will affect the work of the Agency. Namely, the officials for mediating information will have to conduct a test that will determine whether the provision of a given information would harm the legally-protected interest or would be useful from the point of view of the public interest. This will be a real challenge for them considering the fact that, as already mentioned, the officials for mediating public information with the information holders are mostly administrative officers or other persons whose primary task is different – they are employed as lawyers, technical secretaries, etc.

Frame no. 4 – Harm Test (pictorial representation)

•Protection of personal data or other interest.

•Public interest.

In that direction, the Agency should, as soon as possible, undertake activities to prepare instructions for implementing the harm test, which will be submitted to all holders of public information. The instruction should be clear and precise, i.e., explaining in a simple and comprehensible way what the harm test exactly represents. The Agency should prepare such guidelines in cooperation with other independent state bodies, such as the Directorate for Personal Data Protection and the Directorate for Security of Classified Information. This will also cover other legal concepts that are closely related to it, such as those of

- personal data;
- public interest;**
- classified information;
- interest to be protected (or protected interest); and
- other.

The notion of "public interest" is emphasized because, unlike personal data and classified information (which are relatively precisely defined in the laws), it can also lead to difficulties in implementing the LFAPI and the harm test.

In other words, the concept of public interest is the second concept that can be a challenge in practice, that is, a concept that is closely correlated with the harm test. Namely, if we define the harm test, most simply, as a weighing between the protected interest (the protection of personal data, the protection of classified information, etc.) and the public interest, then the need to create a complete and accurate picture of what the public interest would represent is obvious.

The public interest is defined in Article 3, Paragraph 1, p. 7 of LFAPI. We hereby move the definition further.

Frame no. 7 – Legal definition of public interest

"Public Interest" in exercising the right of access to information means, **but is not limited to**, an interest in the information, the publication of which, i.e. gaining access, would mean that:

- 1) an abuse of official position and corrupt behavior will be revealed;

- 2) illegal acquisition or spending of budget funds will be revealed;
- 3) a potential conflict of interest will be disclosed;
- 4) serious threats to people's health and life will be prevented and detected;
- 5) threats to the environment will be prevented and detected;
- 6) it will help to understand the issue about which public policy is being created or parliamentary debate is being conducted; and
- 7) equal treatment of every citizen before the laws will be made possible.

Accordingly, holders of information will have to, in any case where a dilemma arises as to whether the information should be given to the requester or not (because its release may harm an interest other than the public), assess whether its release would imply the achievement of one of the seven stated effects. However, the LFAPI is even broader because before stating the seven paragraphs in Paragraph 1 of Article 7, it establishes that the public interest does not extend only to those situations (as seen from the highlighted part in Frame 7).

So, the holders of information are responsible for conducting the harm test, that is, evaluating the public interest. Hence, their training and the development of in-depth knowledge related not only to the concept of harm test but also to the concept of public interest is essential. For that purpose, in short, the already existing home foreign literature⁸ can serve⁹ to the purpose. In the longer term, on the other hand, the Agency should prepare didactic materials (guide/workshop) with which it will set general guidelines for the implementation of the harm test and interpretation of the public interest on a case-by-case basis, applicable to all holders of information, but also to its officials who have to prepare decisions in the second instance.

2. Other regulations of importance for the work of the Agency

It has already emerged that apart from the Law on Free Access to Public Information, the Law on General Administrative Procedures from 2015 and the Law on Misdemeanors from 2019 are also significant for the Agency.

The Law on the General Administrative Procedure is significant for the work of the Agency because it is applied to all procedural issues that it will face, which are not otherwise regulated in the LFAPI. Thus, the Agency could apply all the provisions for the production of evidence, evaluation of evidence, communication with the parties, etc., when acting as a secondary authority following a complaint. The corresponding provisions are in Articles 104-113 of the Law on General Administrative Procedure. In addition, the Agency should point out the

⁸ Example: https://ico.org.uk/media/for-organisations/documents/1183/the_public_interest_test.pdf (last access: 14.04.2020).

⁹ in-depth analyses of how "public interest" is defined in Macedonian legislation, domestic case law, EU law, and the practice of the European Court of Human Rights offered in the publication: Pavlovski D., Medarski F. (2017). Defining the term "public interest": analysis and critical review of "public interest" in the Macedonian legal and political context, Open Society Foundation - Macedonia, available at: <https://www.fosm.mk/CMS/Files/Documents/ANALIZA-4-MK.pdf> (last access: 14.04.2020).

fact that according to the principle of delegation of competence for resolution stipulated in the Law on the General Administrative Procedure (Article 13 in conjunction with Article 24) when a request for access to public information is made, a decision is made, i.e., the access is allowed by the authorized official for mediating information. At the same time, it is clear that if the requester received the desired information, they will not be interested in whether the official or the authorized official decided upon the request. However, the implementation of the principle of delegation of authority in the long term can lead to a significant improvement in the practices of information holders. Namely, it is reasonable to expect that their officials would have less aversion to providing data than the officials themselves, especially if criticism of the operation of the authority itself can arise from that data. This is essentially in accordance with Article 8 of the Law on Free Access to Public Information, where Paragraph 3 states that "*[T]he official person for mediating information makes contact and provides the necessary information[...]*". The Law on the General Administrative procedure is also significant for the Agency due to the fact that it, just as in the LFAPI, establishes the right to initiate an administrative dispute against the decisions made by the Agency in the second instance.

On the other hand, the law on misdemeanors is significant for the operation of the misdemeanor commission within the Agency, that is, for the implementation of its competencies. From there, all the provisions relating to implementing the misdemeanor procedure by the misdemeanor authorities (in this case: the Agency) are relevant.

On this occasion, a dilemma related to the Law on General Administrative Procedure and the Law on Misdemeanors will be highlighted. It is about the situation in which the Agency decides in a second-degree administrative procedure against a decision of an information holder that it has already annulled. In other words, it is quite possible for the Agency to cancel once a decision by which the holder of information will refuse access and oblige them to deliver the information to the requester, but they will not act in accordance with the instructions in the second-degree decision and again pass a decision in the first degree which is identical to the one already annulled. It is clear that in such a case, the Agency will be able to initiate a misdemeanor procedure and sanction the authorized official who did not act according to the instructions of its decision made in the second instance in accordance with Article 39 Paragraph 1, p. 8 of the Law on Free Access to Public Information. However, the sanction for the authorized official still does not satisfy the interests of the natural or legal person who appears as a requester, considering that the information has not yet been delivered to them. For that to happen, the Agency will have to decide on the merits, which it is obliged to do according to Article 109, Paragraph 11 of the Law on General Administrative Procedure, in a way that obliges the holder of the information to provide the information to the requester. If the holder, although they received a decision from the Agency obliging them to submit the information, did not do so, and the complainant filed a complaint with the Agency again, it will be able to impose a misdemeanor measure for the same case a second time, because it is a matter of not acting on the Agency's new solution (new offense).

3. Recommendations arising from the competencies of the Agency, that is, from the legal framework

From the presented competencies of the Agency, i.e. the provisions of the Law on Free Access to Public Information, the Law on General Administrative Procedure and the Law on Misdemeanors, several recommendations for the Agency can be summarized:

- Recommendation no. 1: Implementation, as soon as possible, of training for the employees of the Agency who are members of the misdemeanor commission. In addition, it is necessary to have the possibility to exchange experiences using the international practice developed by this type of authority in the region and beyond. The exchange of experiences applies to the Agency, not only to the misdemeanor commission.
- Recommendation no. 2: The Agency should build a partnership relationship with the Government (first of all with the minister without a department in charge of communications, accountability, and transparency, but also with the new organizational unit in the General Secretariat) which also has a serious influence on the actions of the holders of information which answer to it (the ministries, the bodies in their composition, the independent bodies of the state administration whose directors it appoints, the independent state authorities whose directors it appoints, public enterprises and joint-stock companies whose founder is the Government or where the Government is the dominant holder). It is expected that the Government will express its desire to build a partnership relationship with the Agency, taking into account that this is one of its strategic determinations according to the Transparency Strategy adopted in November 2019.¹⁰
- Recommendation no. 3: The agency should undertake numerous activities, aside from the decision-making in the second degree administrative procedure and the initiation of misdemeanor proceedings, which imply education and raising the awareness of the holders of information and citizens about the right of free access to public information.
- Recommendation no. 4: The agency should, as soon as possible, prepare a guideline for the implementation of the harm test in cooperation with the academic field, as well as citizens' associations and foundations. The Directorate for Personal Data Protection and the Directorate for Security of Classified Information should also participate in the preparation. The agency should also prepare didactic materials (guides/workshops) on the concept of "public interest," which is closely related to the harm test, with which officials will be given general guidelines on evaluating the public interest in each individual case.

¹⁰See: <https://vlada.mk/nacionalni-strategiji> (last access on 04/09/2020).

IV. THE AGENCY FOR THE PROTECTION OF THE RIGHT OF FREE ACCESS TO PUBLIC INFORMATION THROUGH THE PRISM OF KEY STANDARDS AND PARAMETERS

1. Independence and impartiality of the Agency

1.1. General notes on the status and position of the Agency for the Protection of the Right to Free Access to Public Information and the Relationship with Other State Authorities

Free access to information is a constitutional right established in Article 16 paragraph 3 of the Constitution of the Republic of North Macedonia.

Furthermore, this constitutional right is operationalized by a special Law on the protection of the right to free access to public information published in the Official Gazette of the Republic of North Macedonia no. 101/2019. The purpose of LFAPI is determined in the second article and consists in ensuring publicity and openness in the operations of the holders of information and enabling natural and legal persons to exercise the right of free access to public information. The same provision foresees a duty for the holders of information about their work to provide information to the public. The concern for the implementation of the provisions of LFAPI is the undisputed competence of the Agency for the protection of the right to free access to public information (Article 30, paragraph 1 paragraph 2).

This competence represents a significant, serious, and extensive set of rights and obligations for the body to which the legislator entrusted the competence. That is why the legislator, determining the status of that body - AFAPI, defined it as an **autonomous and independent state body**, which works and makes decisions in accordance with the competences of LFAPI (Article 29, paragraph 1).

The independence and autonomy of the state bodies are usually valued from three aspects: real independence, individual independence, and procedural independence or autonomy.

Actual independence means that the state authority in the exercise of its authority should respect the law without any side influences from any authority. The agency should work on the basis of the law, and all other authorities, primarily the executive power, must not influence the implementation of the competences.

Individual independence is perceived through the method and criteria for selection and dismissal of office holders in independent state bodies. For real independence, it is necessary to have legally established criteria for their selection based on expertise and professionalism, as well as legally established grounds based on objectivity for premature dismissal of officials only in cases where such responsibility will be proven through an objective and transparent procedure by side of the body that made the selection. The assessment of individual independence also includes the legal provisions for exempting the responsible or official person from making decisions in specific cases.

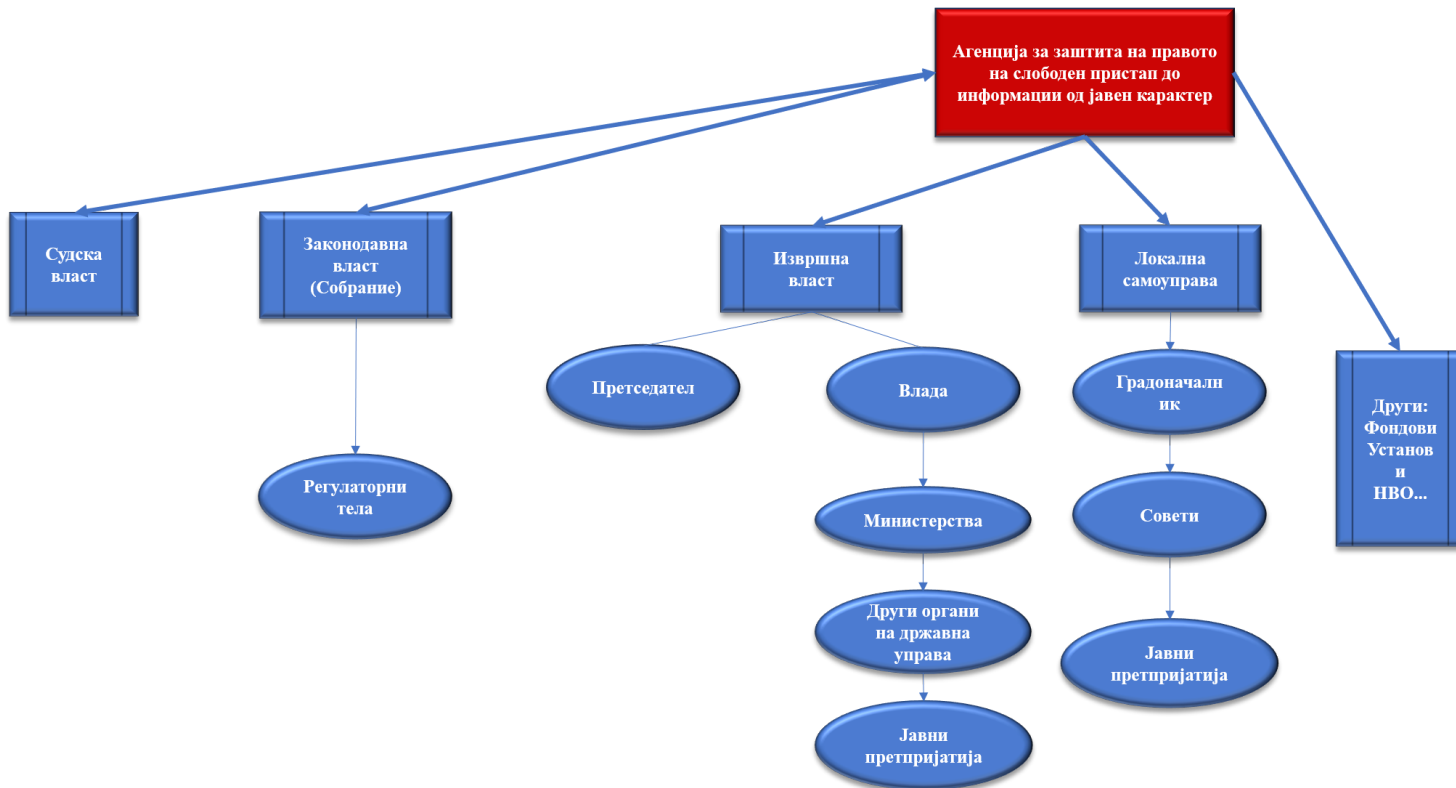
Procedural independence presupposes the existence of a legally established procedure of the state decision-making body, mandatory justification of each of the decisions made, publication of the decisions and their availability to the public, and judicial control of the legality of the decisions made.

Finally, in addition to meeting the formal criteria for independence, the impression that the state body leaves on independence and autonomy in its work is also important. At the same time, the attitude of the party whose request or obligation is being decided is not important. What's important is the absence of fear that there will be bias from the state authority that decides or its submission to any side influences.

This functional analysis is based on the fact that AFAPI is not the only body in the country responsible for realizing the right to free access to public information or, generally speaking, for the transparency of the state, which is the foundation of democracy. Moreover, it represents an authority responsible for the legal protection of that right, but its realization, as well as the degree of transparency of the state in general, depends on the extent to which all public authorities, which the legislator refers to as holders of information, are open to the public. This includes all the bodies facing the executive power, the Assembly of the Republic of North Macedonia itself as a holder of information, the judiciary, but also the private entities entrusted with public powers, such as public enterprises, private companies exercising public powers, institutions, funds, associations of citizens to whom public powers have been transferred by law, etc.

However, AFAPI has a key place in the system of authorities responsible for ensuring the transparent functioning of the state, but this does not mean its dependence on other institutions and public authorities. On the contrary, it follows from LFAPI that the Agency is competent to control and train all holders of public information and to establish close mutual cooperation with them. Hierarchically speaking, the mutual relationship of AFAPI with other public bodies would look as shown:

Figure no. 5 – AFAPI's relationship with other public bodies



Specifically, even though Parliament established it, because it is the same as all other public bodies - holders of information, AFAPI has its own supervisory role over it in the area of free access to public information in the sense that it acts as a secondary authority on its acts issued in response to requests for free access, as well (*see illustration*). The relationship with the Assembly, on the other hand, is dichotomous, given that the Assembly elects the Agency's director and deputy director and is liable for their removal, while the Agency must provide yearly work reports to the Assembly as its founder. Also, the budget of the Agency is determined by the Parliament, and the LFAPI does not contain a provision for a budget minimum intended for the Agency from the overall state budget on an annual level. The budgetary dependence of every public body on the Assembly, including the Agency, leads to difficulties in functioning, i.e., in the successful execution of its numerous competencies. Although this does not necessarily mean that there is a tendency to weaken the position of the Agency, it should be taken into account that this is possible, or rather that its independence can be compromised in this way.

A two-sided mutual relationship also exists between the Agency and the judiciary, especially considering the administrative courts in the country. Namely, on the one hand, the Agency is a secondary authority that decides on appeals of information requesters against the acts of the courts in the country, but on the other hand, its decisions, which it makes after the appeal procedure, are subject to administrative-judicial control.

Concerning all other public bodies, including the executive power and local self-government units, the Agency is competent to exercise full control over the legality of its decisions following the parties' requests for free access to public information, and its decisions are final. What's more, according to the new Law on Administrative Disputes, the holders as public bodies do not have the right to file a lawsuit against the final decisions of the Agency for the initiation of an administrative dispute because, in specific cases, only the applicant as a party to the procedure can appear as a plaintiff. The provisions of LFAPI determine the competence of the Agency to conduct misdemeanor proceedings against the holders of information, which means that its control role is strengthened in relation to all these authorities. However, in addition to the control of the legality of their acts and operation in the sphere of free access to public information, the Agency also performs a preventive function, which is the undertaking of activities for the education of the holders of information about the right of free access to the information they have. With all public authorities, the Agency is obliged to develop a relationship of cooperation and partnership for the efficient realization of the purpose of the Law.

1.2. Procedure and conditions for the election of the director and deputy director of the Agency for the Protection of the Right to Free Access to Public Information

1.2.1 Selection Procedure

The director and deputy director of the Agency are appointed by the Assembly after a previously published public announcement. Their term of office is six years, with the right to one re-election. The public notice of their election is published in three daily newspapers throughout the territory of the Republic of North Macedonia, one of which is published in the language spoken by at least 20% of the citizens who speak an official language other than the Macedonian language. The Election and Appointments Committee prepares a proposal for a list of candidates for director and deputy director of the Agency and submits it to the Parliament. The director of the Agency and his deputy are answerable to the Parliament of the Republic of North Macedonia for their work. These are the only legal provisions that refer to the selection of Agency managers. This means that the provisions of the Rules of Procedure of the Assembly remain to be applied, and the selection procedure is carried out in a manner established in the practice of the Assembly, which is almost identical for all officials appointed by the Assembly following the published announcement.

1.2.2. Selection conditions

The law on free access to public information was first adopted in 2006. It was amended and supplemented seven times before the new LFAPI was adopted in 2019.

The new Law foresees certain differences regarding the conditions and criteria for the selection of the director and deputy director of the Agency compared to the conditions and criteria for the selection of the president and members of the Commission prescribed by the previous LFAPI. In the following table, a comparison of the two legal solutions is offered:

Table no. 2 - Comparison of the conditions for appointing the president and members of the CFAPI according to the old LFAPI from 2006 with the amendments from 2014 and the new LFAPI from 2019

Conditions provided for a president, deputy and members of CFAPI	Conditions provided for director and deputy director of AFAPI
Citizenship	Citizenship
Higher education with acquired at least 240 credits according to ECTS or completed VII/1 degree law school	Higher education with acquired at least 300 credits according to ECTS or VII/1 degree of education in the field of legal sciences <i>The new solution, which allows for the acquisition of 300 credits in the field of legal sciences, is more appropriate because it provides greater expertise in the field.</i>
Eight years of work experience in the field of information and legal affairs (president). Six years of work experience, three years in the government sector (deputy president). Five years of work experience in the field of information and legal affairs (member).	At least eight years of work experience in the field of information and legal sciences. <i>The word "at least" gives the possibility of preference in selecting candidates with more work experience. In both laws, there is no express requirement that work experience be counted after completing higher education.</i>
The person is not a member of a political party	The person has not held office in a body of a political party in the last ten years. <i>The new LFAPI, in relation to the previous one, prescribes additional prevention of partisanship in the functions, but the possibility remains open that the elected officials can be active party members</i>

	<i>simultaneously, which is a constitutionally guaranteed right of every citizen.</i>
Possesses one of the following internationally recognized certificates or certificates for active knowledge of the English language no older than five years: - TOEFL IBT - at least 74 points - IELTS - at least 6 points, - ILEC (Cambridge English: Legal) - at least B2 level, - FCE (Cambridge English: First) - passed, - BULATS - at least 60 points and - APTIS - at least B2 level	Possesses one of the following internationally recognized certificates or certificates for active knowledge of the English language not older than five years: - TOEFL IBT - at least 74 points, - IELTS - at least 6 points, - ILEC (Cambridge English: Legal) - at least B2 level, - FCE (Cambridge English: First) - passed, - BULATS - at least 60 points, - APTIS - at least B2 level. <i>A requirement contained in all laws for the election not only of office holders but also of administrative officers, which is amended in many laws when governments change and which loses its sense of existence in the light of how it is carried out in practice.</i>
/Passed psychological test and integrity test. <i>An extremely important condition for the selection of officials that is not present in the new Law due to the loss of the meaning of its existence, starting from the way in which the mentioned tests could be passed in practice.</i>	With a final court verdict, the person has not been sentenced to a fine or misdemeanor sanction prohibiting them from performing a profession, activity, or duty. <i>An unnecessary legal requirement because the verdict itself means the impossibility of performing a specific duty or continuing with its performance without this being explicitly determined in the LFAPI.</i>

From the comparative analysis of the past and present provisions for the election of officials in the CFAPI, i.e. the AFAPI, no conclusion can be drawn that tectonic or sweeping legal changes have been made in terms of the procedure and conditions for selection.

1.3. Conditions for dismissal of the Director of the Agency as a guarantee for efficient, professional, and independent performance of the function

The director and the deputy director of AFAPI can be dismissed by the Assembly at the proposal of the Commission on Elections and Appointments of the Assembly of the Republic of North Macedonia if specific conditions determined by the Law are met.

Namely, the director or deputy director can be dismissed if:

- It was determined that one of the selection conditions was not met,
- The person refuses to submit a statement of property status and interests in accordance with the law or if the data contained in the statement are largely untrue,
- The person clearly violated the rules on conflict of interest, i.e. exemption in situations in which the director, i.e. the deputy, knew or should have known about the existence of any of the grounds for conflict of interest, i.e. exemption provided by law, or
- The person does not respect the deadlines for taking certain actions in accordance with the LFAPI without justified reasons.

The law established the conditions under which an official of AFAPI can be dismissed, but did not prescribe who could initiate a dismissal procedure (who could inform the Commission on Elections and Appointments of the Assembly of the Republic of North Macedonia about the existence of any of the stated grounds), nor is there a prescribed procedure by which the dismissal would be carried out.

In case of dismissal of the director of AFAPI, and until the election of a new one, the position is performed by the deputy director with all the duties and powers that the director had. The procedure for electing a new director always begins within 10 days of dismissal.

1.4. Measurement and analysis results

1.4.1. Questionnaire results

All respondents were asked whether they think there is room for **improvement of the procedure for selecting the director and deputy director** of AFAPI. Most of them answered affirmatively, and those who gave their own comments to the answer pointed out that it could be more transparent. A significant minority of respondents are of the opinion that the procedure is good and nothing should be changed. The ratio of answers is the same regarding the question of whether there's a need for a **stricter legal criteria and conditions for selecting a director and deputy director**. The same insignificant number of respondents believes that the legal selection criteria should not be changed, while the majority believes that there is room for their modification in the direction of increasing the requirements for expertise and professionalism of the officials in the matter that constitutes the competence of AFAPI. Some of the respondents emphasize the need for the director and the deputy to be experienced lawyers, and there is also the opinion that it would be useful for the deputy director to be an expert in the field of economics or management.

Although all respondents answered that they are familiar with the legal **grounds for dismissal of a director or deputy director** of the Agency, a certain number of respondents answered that they should not exist because that would violate the independence of the appointed officials on the next question asking for an opinion on the need for the existence of such legal

bases. Also, to one of the questions that refers to the existence of internal procedures for exempting an official when deciding on cases, almost all respondents (with the exception of one) answered that there are no such procedures in the Agency, and no one puts this issue in context with the fact that one of the legal criteria for dismissing the director or deputy director is **violation of exemption rules** in case of their conflict of interest.

Regarding the question of **the relationship between the Agency and the Assembly of the Republic of North Macedonia** (or its working bodies such as the Commission on Elections and Appointments or the Commission on Political System), everyone's answer is that special relations do not exist apart from the fulfillment of the legal obligation to submit an annual report on the work of the Agency to the Parliament. The respondents confirm that since the existence of the Commission, as well as the Agency, the Assembly or its working body have never been particularly interested in any segment of the work of this body, nor have they requested a special report on a specific case or situation. Furthermore, after the adoption of the annual report, there has never been a feedback relationship from the Assembly to the Agency, and previously to the Commission, in the direction of the Assembly's intervention to the Government to improve certain negative situations among the holders of information established by the adopted report. Hence, the question arises about the expediency and utility value of the adopted work reports.

To the direct question of whether there was **external influences and pressures of the Agency when deciding cases**, only as an exception can one find answers indicating that such phenomena occurred without any wider explanation (noting that they were unsuccessful in terms of the behavior of the respondent), as well as an attitude that there were attempts by the information holders to prove that their solutions are correct, but this could not be considered as influence or pressure, only as their ignorance of the matter.

In the end, a small number of respondents do not have an answer to most of the questions, or their answer is "I don't know". If it is a question of lack of interest in answering questionnaires, this phenomenon may not represent a worrying element for the overall functioning of the Agency, but if these are real answers, then the conclusion would be that a quarter of the employees do not have any knowledge and information about the by-laws of the Agency, about the legal provisions for the selection and dismissal of the director and deputy director, about the way in which decisions are made on appeals, about the organizational structure of the body in which they are employed, as well as about the method of budgeting, international cooperation, and management with human resources in the Agency in which they work, and this could be a devastating fact for the success of the Agency's work.

1.4.2. Conclusions of the analysis

Several key observations, that is, conclusions, emerge from the comments so far: (*) The formal criteria for the independence of a state body are represented in the legislation regulating the status of the Agency. LFAPI offers the same guarantees for the independence of the managers (officials) of the Agency as the previous laws in this area that ensured the independence of the

Commission. The difference consists in the impossibility of being elected as a director or deputy director of the Agency, a person who, in the previous period, held office in a body of a political party. There is no legally prescribed obligation for the Assembly to publish a public announcement for the election of the director and deputy director of the Agency six months before the expiration of their mandates. (*) LFAPI does not have a precisely established procedure for dismissing a director or deputy director. The grounds for their dismissal are prescribed, but not who can initiate such a procedure, in what time frame, etc. (*) It is necessary to develop internal procedures in AFAPI for grounds and method of exemption in decision-making, which will be based on the rules established by procedural laws, primarily by LGAP. Failure to comply with the exemption rules is grounds for dismissal of the director or deputy director of AFAPI; (*) It is necessary to intensify the cooperation with the Assembly as the founder of AFAPI and the body competent to supervise the work of the Agency. For this purpose, it is good to hold frequent meetings with the representatives of the working bodies of the Assembly responsible for reviewing the annual reports on the work of the AFAPI, organizing joint workshops, etc., at which, in addition to the officials (director, deputy director, and deputies), actively officials from both institutions whose scope of work is related to the open issues that are the subject of discussion will also take part.

2. Effectiveness of the Agency

2.1. Resolution rate by individual case and an average number of days to resolve a case

In general, when evaluating the effectiveness in handling (solving cases) of any body, three sub-indicators are used:

- a) Resolution rate;
- b) Rate of pending cases;
- c) Resolution time per individual case.

2.2. Measurement and analysis results

a) The resolution rate is the ratio of the number of solved cases in relation to the number of cases in work during the given year (solved cases ÷ a total number of cases in work). This is the simplest indicator. A lower resolution rate also means a longer resolution time per individual case, and, thus less effectiveness of the authority. Conversely, a higher resolution rate means that the given authority is effective.

The table below shows that the resolution rate in the years 2015, 2016, and 2017 is high, while in 2018 and 2019, it is very low, indicating low effectiveness.

Table no. 3 - Rate of resolution of appeal cases 2015-2019

	2019	2018	2017	2016	2015	2014
Received complaints	755	622	758	619	960	
Transferred to next year	741	480	14	28	25	42
Subjects in progress (Admitted + transferred from the previous year)	1.235	636	786	644	1.002	
Solved subjects	471	142	772	616	935	
Resolution rate	38%	22%	98%	96%	93%	

The condition is also shown graphically in the following display.

Figure no. 6 – Rate of resolution of appeal cases 2015-2019

The rate at which appeals are resolved



b) The rate of pending cases is expressed through the number of pending cases per 100 citizens that remain at the end of the accounting period (it can be one year). Namely, the number of pending cases is divided by the number of citizens, and the resulting figure is multiplied by 100. Extracting this data on efficiency can be useful if, for example, in this section, a brief overview of the efficiency of bodies that have the same competence in other countries is made (because the indicator itself also takes into account the population of the given country), so there can be no invalid data.

Table no. 4 - Rate of pending cases 2015-2019

	2019	2018	2017	2016	2015
Number of the population according to SSO	2.077.13	2.077.13	2.075.30	2.073.70	2.071.278
	2	2	1	2	

Number of pending issues	764	494	14	28	67
Pending case rate	0,036781	0,023783	0,000675	0,00135	0,003235

Figure no. 7 - Rate of pending cases 2015-2019

The rate of unresolved appeals



It can be clearly seen from the table and graph that the rate of pending cases until 2017 remains at a low level, while there is a significant growth in 2018 and 2019. As mentioned, this is due to the turbulence in the Commission, lack of equipment, and the impossibility of working.

c) The resolution time per individual case is expressed so that the number of pending cases at the end of the year is divided by the number of resolved cases, after which the obtained result is multiplied by 365 (days of the year).

Table no. 5 - Duration of resolving an individual case 2015-2019

	2019	2018	2017	2016	2015
Number of resolved cases	471	142	772	616	935
Number of pending cases	764	494	14	28	67
The resolution rate per individual cases	592,1	1269,8	6,6	16,6	26,2

This indicator also confirms the unfavorable trend in 2018 and 2019. The year 2017 was the most favorable when the cases were resolved in an average of 6.6 days, previously in 2015 in 26 days, while the years 2018 and 2019 are incomparable for familiar reasons.

From the aforementioned in terms of the Commission's effectiveness, and according to the calculated indicators, it can be concluded that the Commission was extremely ineffective in the last two years and that the Agency should be organized to introduce a workable system that will ensure high effectiveness.

Also, there is no defined indicator for the efficiency of the Agency's operation, which should indicate the way of using the resources in the Agency.

2.3 Recommendations resulting from the measurement of the effectiveness of the Agency according to the given indicators

Effectiveness should be measured from the aspect of whether all cases handled by the Agency are processed within legal deadlines, what is the quality of the Agency's work, and whether the defined goals are achieved. It is also necessary to quantify the employees' work, i.e. to introduce a work norm for employees. The norm should determine what is the normal volume of work that an employee can perform with the required qualifications, knowledge, and experience. The norm should be defined according to the effective required working time for the execution of individual activities.

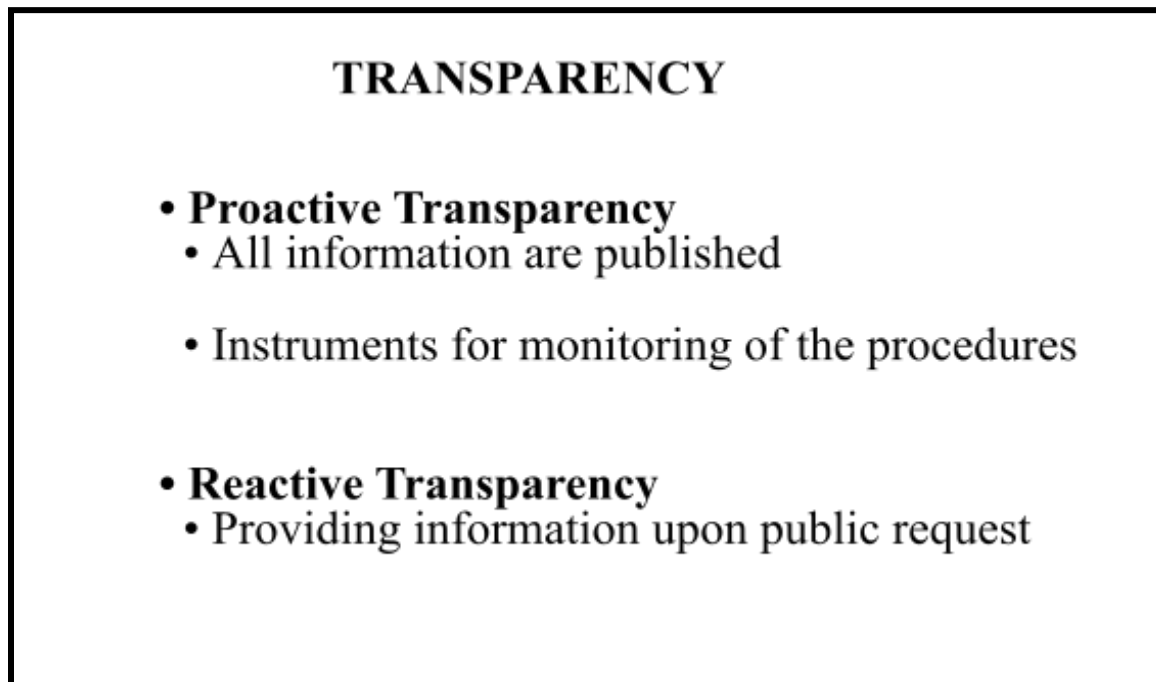
On the other hand, indicators for measuring efficiency should be defined, i.e. how well the available resources are used and whether the effects of the Agency's operation can be achieved with fewer funds in terms of finances, hiring a smaller number of executors, and other material means. A good indicator of this can be the price cost of the services provided by the Agency and a comparison of the invested funds and the achieved results.

3. Transparency and public relations of the Agency for the Protection of the Right to Free Access to Public Information

Transparency indicates that the work of state entities is open to the public. If the definitions and explanations of responsibility are well analyzed, it can be derived that the principle of transparency is contained in the principle of responsibility because if the work of the state body is not transparent, then there will be no responsibility for its work. In general, all citizens, and especially the interest groups that are directly affected by the work of a state body, must have insight into the exercise of the public powers of that body, as well as have instruments for monitoring decision-making procedures. Also, the public should be familiar with the regulations applied in the procedures for exercising their rights in a clear and understandable way.

There are two types of transparency and availability of information of public interest. The first is called proactive transparency, which implies the publication of information of public interest even before the information is requested. At the basis of this concept lies the conviction that all information of public interest belongs to the public and is only in the possession of the state authority. In fact, it is about making sure that there is a general right of the public to know, and proactive transparency is a mechanism for realizing this right. The second type is reactive transparency. It is also about the public's right to know, but that right, in this case, is exercised based on a request for information.

Figure no. 8 - Types of transparency



When it comes to the Agency in our country or similar bodies in other countries, transparency as a principle of their work, starting from the purpose of their establishment and existence, can be reduced to the following – strengthening the trust of citizens in the public institutions and the transparency of all public bodies, to all authorities that are holders of public information, in one word - trust in the transparency of the state's operations. It implies sharing with the public information created or owned by public authorities as well as control over their transparent operation.

The success of the Agency's work is closely related to its transparency. Most of the time, the low level of trust of the citizens in the institutions is due, among other things, to the non-transparent operation of those authorities or to the lack of capacity to effectively communicate with the public. In addition, the educational role that the Agency has in the whole system for increasing the transparency of the work of public bodies leads to the conclusion that it should communicate more and more often with the public and inform the institutions, but also the citizens (through the media and non-governmental organizations) for its operation. In

particular, the transparent operation of AFAPI includes all the points listed in the continuation of this chapter of the functional analysis.

3.1. Publication of decisions, access to information, communication with other authorities, and annual reports

There is no legal obligation to publish the decisions made by the Agency. However, such a finding should not lead to the conclusion that there is a ban on the publication of the adopted decisions. On the contrary, it is recommended that the Agency publishes the decisions it brings on its website for the sake of greater transparency of its operation and for the purpose of implementing the educational role assigned to it by law. Until a special software solution is provided, the decisions could only be available as a scan which should not assume an excessive cost of funds and resources for the Agency. However, decisions published this way will mean that interested parties will face difficulties searching for a given decision and reviewing its content.

One of the recommendations in this context is to start with the publication of the decisions made, both in the second instance procedure following complaints of the information requesters and the decisions in the misdemeanor cases handled by the Agency. It needs to be done by captioning the decisions in a way that would be simple for use (user-friendly) by the citizens. Namely, the decisions could be classified according to the topic or according to the public authorities against whose decisions the appeal procedure was conducted and then searched according to keywords. Additional attention should be paid to the anonymization of those decisions.

As for the information, announcements, and other data about the operation of the Agency, the website is up-to-date. The research showed the following results:

Frame no. 8 – Published, partially published, and unpublished information by AFAPI¹¹

Published information:
<ul style="list-style-type: none"><input type="checkbox"/> Explanation of the legal competencies of AFAPI as the holder of the information;<input type="checkbox"/> List of persons employed in AFAPI as the holder of information, including position, official e-mail and official telephone number (not everyone has an official telephone);<input type="checkbox"/> Basic contact details for AFAPI as the holder of information as follows: name, address, telephone number, fax number, e-mail, and website;

¹¹

Source: <http://komspi.mk/%d0%bb%d0%b8%d1%81%d1%82%d0%b0-%d0%bd%d0%b0-%d0%b8%d0%bd%d1%84%d0%be%d1%80%d0%bc%d0%b0%d1%86%d0%b8%d0%b8-2/> (last access on 04/30/2020).

- Data on responsible persons at AFAPI as the holder of information (contact information, CV);
- Basic data for contact with the officials for mediating public information in AFAPI with the following information: name and surname, e-mail, and telephone number;
- Regulations relating to the competence of AFAPI as the holder of information, related to the register of regulations published in the Official Gazette;
- Regulations adopted by AFAPI as the holder of information in accordance with its competence in the form of by-laws: regulations (regulations for internal organization, regulations for systematization of workplaces, regulations for protected reporting in public sector institutions, etc.), instructions and other types acts for the execution of laws and other regulations, when authorized by law for that purpose;
- Method of submitting an application for access to information (method of submitting an verbal and written application for access to information, as well as an electronic application);
- Reports on the operation submitted to the authorities responsible for control and supervision, and
- Documentation related to public procurement;
- Annual work plans and programs;
- Budgets for 2019, 2018, 2017;
- Report on audit of financial statements for 2016 and 2011;
- Strategic plans and strategies for the work of AFAPI as a holder of information;
- Annual financial plans by quarters and budget implementation programs (within annual reports).

Partially published information:

- Draft programs, programs, views, opinions, studies, and other similar documents that refer to the acts under the competence of AFAPI.
- Organogram for the internal organization (within the annual reports).

3.2. Communication with citizens, other authorities, and annual reports

In the context of the daily communication with the citizens, however, it could be pointed out that the basic challenge of the Agency is the lack of a public relations service. In addition, there are no internal procedures for what form is published on the website. Press conferences and public appearances of AFAPI representatives are extremely rare, so citizens hardly understand the role and purpose of the existence of this body, and it is even more difficult for them to monitor and evaluate its work. Thus, it can be said that communication with the public is primarily due to the will of the management and employees whose primary tasks are not public relations, instead of being the result of an organized, systemic approach. From there, an internal

act (guideline) is needed for communication with the public, which will predict what and when is published on the website, how to build an attitude for appearances in the media, holding press conferences, giving statements, and of course, promotion of the work of the Agency. Among other things, the internal guidelines for communication with the public could regulate the issue of the way in which the decisions will be published on the website.

As for communication with other entities, it is positive that civil society organizations monitor AFAPI. On the other hand, there is a lack of a systemic approach in terms of communication with the Parliament stemming from both sides. Also, an organized and prescribed approach to communication has not been determined, nor is it implemented in practice with other public bodies in the country as holders of information subject to control by the Agency in order for continuous communication to strengthen the preventive and educational role of the Agency, as opposed to its repressive or controlling side.

In terms of communication not only with the public but also analyzing internal communication, it takes place electronically through the official addresses of all employees, but unfortunately also their electronic addresses, and on the website of the Agency, there is still an abbreviation of the old name of this body – kompsi.mk. This circumstance frequently produces uncertainty among citizens and users of the Agency's services, and it must be resolved as soon as possible.

3.2.1. Content of the annual reports of AFAPI

The Agency's annual report, as a tool, has a dual function. On the one hand, it should serve as a document with which the Agency informs its founder, the Assembly, about its work during a calendar year. On the other hand, the annual report should also be perceived as a method of presenting essential problems in the field of transparency of the state, as well as the awareness of the importance of this principle before the Assembly. Namely, through the annual report, the Parliament as a political body could get to know in which departments most challenges are coming from regarding access to public information, i.e. where non-transparent operation is most often observed, regardless of whether it is insufficient active or reactive transparency. However, this implies the existence of serious analytical data in the report (for example, the annual report could indicate whether more problems were detected in the bodies of the ministries than in the ministries themselves or in the entities entrusted with public powers, etc.).

The Agency's annual reports, available on its website at the moment, do not contain such data. They present only rough (aggregate) data on the operation of the Agency and the subjects, but there is no more serious analytical framework through which the key problems by departments could be presented to the Assembly. To be honest, the available personnel capacities of the Agency currently leave no room for such expectations, but in the future, the Agency will have to be provided with an analytical service and appropriate IT equipment.

Article 36 Paragraph 2 of LFAPI precisely determines the elements of the content of the annual report on the work of the Agency. In general, the reports of the Agency from 2019, as

well as from previous years, satisfy the minimum provisions, but certain shortcomings can still be ascertained, the overcoming of which would improve the content of the reports. Thus, it is necessary that the annual reports contain data on the reasons for the greater number of denied or dismissed requests, a review of the decisions (decisions) of the holders of information against which appeals have been filed, as well as stating the reasons for such decisions in case of repeated rejection of the filed appeals and the reasons for denial or dismissal of the appeals by the Agency.

3.3. Distribution of cases within the professional service

The agency does not have an automated system for the distribution of cases among the officials authorized to lead the administrative procedures following the complaints of applicants. Namely, at the moment of writing the functional analysis, the distribution is done so that the employees in the archive file the cases in the rules of procedure, and then they are arranged chronologically, but it is not clear to which officer which case (complaint) will be assigned, and what criteria and written rules are applied for this distribution of cases.

By nature, such a procedure is risky due to the possibility of probable subjectivism. It would be preferable to avoid this circumstance by implementing a system for electronic item distribution, management, and monitoring, which is intended to be built within the framework of the IPA project.

3.4. Measurement and analysis results

Results of respondents' answers¹² questionnaires - all the respondents who answered the questions from the part of the Questionnaire that refers to the transparency of the work, claim that there is no authorized official in the Agency responsible for the public relations of the Agency. Also, the unequivocal view of all respondents is that there is a need for such an executor in this authority who should have special qualifications and work experience in the field of public relations. Respondents confirm that there are no special internal procedures in the Agency for the manner and type of information, announcements, and statements published on the Agency's website, nor rules for public appearances by employees and management during public presentations of the work of AFAPI.

3.5. Conclusions of the analysis

Several key observations, i.e. conclusions, emerge from the remarks so far:

¹² The employees, the director, and the deputy director of the Agency were provided with questionnaires to which they answered anonymously, the content of which can be found in the Annex to this functional analysis.

- (*) For the sake of greater transparency in relation to decision-making on cases as one of the Agency's basic competences, it is necessary that the decisions it makes in administrative and misdemeanor proceedings be published anonymously on its website;
- (*) For the consistent implementation of the first recommendation, an appropriate software solution is needed, which will enable a direct search of the Agency's decisions by users and interested citizens through their categorization and use of keywords;
- (*) It is necessary to employ an expert in the field of public relations with completed appropriate education (journalism studies, public relations studies) and work experience who will have knowledge of the basic terms of administrative procedure and with whose help the public the results of the work of the Agency will be properly presented;
- (*) Internal rules for addressing the public and publishing information on the Agency's website are missing;
- (*) It is desirable to create a special software solution for the Agency for the automatic distribution of cases (complaints), as well as for monitoring the movement of cases and the deadline for their completion;
- (*) The website of the Agency should be supplemented with certain information, the publication of which is mandatory according to the LFAPI;
- (*) The name of the Agency in the official electronic addresses of the employees, as well as on the website, should be changed, according to its new organizational structure and the legally adopted name;
- (*) The annual reports should be supplemented with contents that are undisputably prescribed by LFAPI.

4. Strategic planning in the Agency

4.1. Process of bringing the Agency's strategic plan

Strategic planning is one of the most important functions performed in any organization. The strategic plan is the starting point for the preparation of annual programs, budgets, organization of operations, processes, and procedures in the organization. Strategic planning defines the goals for which the organization strives and the way it will achieve the set goals by defining the necessary activities, necessary resources, processes, and work protocols.

Strategic planning is a continuous and dynamic activity carried out by the organization's top management. Continuous activity, because it does not end with the implementation of the Strategic Plan (SP), but it is constantly re-examined, whether it is appropriate to the dynamic environment and the changes that constantly occur and affect the goals and activities.

To this end, the agency started working in December 2019 and does not have its own SP, but previously the Commission had prepared an SP for 2018-2020. The SP of the Commission was adopted with the help of the OSCE and for that occasion, a working group was formed to coordinate the process of preparation of the SP. The working group first made an analysis of the

legal framework for the Commission's action and then made an analysis of internal and external factors of influence - (SWOT) analysis. The next phase was the setting of long-term goals and priorities for the Commission and a Plan for monitoring the progress of the implementation of activities foreseen by the SP.

Frame no. 9 – Quotation from the SP of the Commission 2018-2020

A revision of the Strategic Plan should be done at least once a year. This should include a review of resource utilization, time frame, and monitoring indicators to evaluate resources available for strategic endeavors. This procedure should cover not only the results but also the implementation process, the level of participation, and the dynamics of changing the laws.

Within the framework of the SP, a Plan for overcoming the identified risks was made.

For each of the defined long-term goals, an action plan for three years has been developed, where the activities that should be carried out to achieve the goals are defined.

4.2. Adequacy of SP

The SP of the Commission was prepared correctly, taking into account the process of preparation and the constituent parts of the SP. The most important part of the SP of the Commission refers to the definition of long-term goals:

1. Raising public awareness of the right to free access to public information
2. Improvement of the legal framework for free access to public information
3. Improvement of the internal organization and systematization of jobs, human resources, and spatial and technical working conditions
4. Cooperation and exchange of experiences with domestic and international partners and experts

From the analysis of SP 2018-2020 and the goals defined by it, it can be concluded that only part of the goals is set as real results (outcomes) that should be achieved in the planning period and that refer to the mission of the Commission. Part of the goals is defined factually as inputs (means, resources) that should be used in the direction of achieving the goals related to better ensure the availability of information. Thus, only the first goal can be considered to be in the direction of the mission of the Commission for the protection and realization of the constitutionally guaranteed right to free access to public information. The other goals that have been defined relate to the ways and activities that the Commission will take to achieve the first goal, such as improving the legal framework, improving the operation of the Commission, and exchanging experiences with interested parties.

The SP does not clearly define the Theory of change, which would explain the cause-and-effect relationship between the defined goals and the proposed activities. A clear explanation of this relationship is needed, which should be checked after a certain period of time, i.e. whether the theory or logic of the intervention is well established and whether it delivers results.

SP does not have clearly defined indicators at the level of goals, i.e. how to measure the achievement of goals in the long term, as well as basic data (baseline) through which progress and achievement of goals could be measured. This is a basic part of a strategic plan to define the indicators and goals to be achieved in a certain period of time. Without set indicators and goals, it is not possible to determine if the strategy is good, and if it yields results.

The SP is also accompanied by action plans for each goal separately, but even here, the indicators, although defined, do not have their own numerical value (targets) and are not measurable by periods, therefore it is not possible to determine the degree of their realization. In addition, SP and AP do not indicate the necessary budget for achieving the goals, as a basic prerequisite for implementing the activities and achieving the goals.

The annual programs are not related to the SP nor to the AP, which leads to the conclusion that the SP was not used for short-term planning, despite the statements in the SP that it will serve as the basis for further activities of the Commission.

The answers after the conducted employee survey and their lack of familiarity with the process, the competence to implement and monitor the SP, and the progress of the SP, leave room for a conclusion that there is no system for implementation and monitoring of the SP, a system for auditing the SP. In turn, this creates a general dilemma regarding whether and to what extent the objectives defined by SP have been achieved.

According to the systematization of the Commission, the head of the Financial Affairs Department coordinates the process of preparing, amending, and supplementing the Commission's Budget and Strategic Plan; the second person in charge is the Advisor for Development and Management of Human Resources from the Department for the Implementation of Procedures for Complaints, Legal and General Affairs, who by the description of the work objectives, in addition to others, is in charge of the strategic objectives of the Commission

It can be concluded from the aforementioned that the SP was prepared more as a formal document and that its practical use cannot be recognized.

4.3. Monitoring and evaluation of the achievement of the objectives defined by SP and AP

Each plan should have clear goals, the achievement of which is constantly monitored. For this purpose, a monitoring and evaluation system is being established, which will provide the management with a clear picture of the progress of achieving the goals, the expediency and correctness of the choice of the activities chosen to achieve the goals.

In the SP, it is mentioned that it is important to constantly monitor the achievement of the goals, but this system, i.e. a monitoring framework for the goals is not offered. In the past three-year period, the Commission did not monitor and measure the long-term achievement, or even the annual goals set by the annual program.

4.4. Recommendations arising from the analysis of the SP of the Agency

One of the Agency's priorities at the very beginning of its establishment should be the preparation of a quality SP that will serve as the basis for the preparation of the Agency's annual programs and budgets.

For those reasons, the management should form a team that will first evaluate the previous strategy and, based on the findings of the evaluation of the previous strategy, approach the development of a new SP for the next period in which the shortcomings of the previous one will be removed.

Information on the implementation of the SP, and the degree of achievement of the goals should be separately contained in each annual report prepared by the Agency.

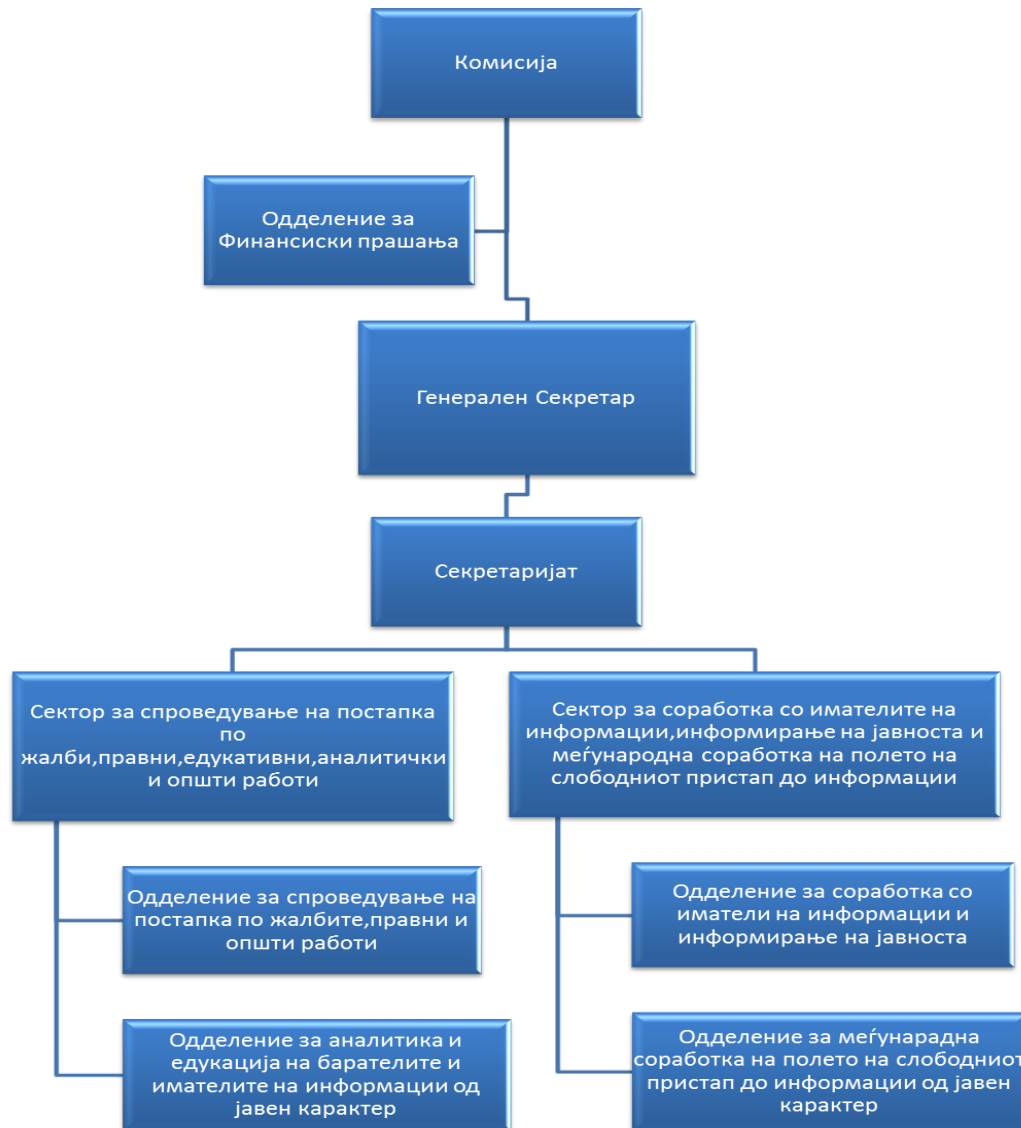
It is necessary to carry out capacity building in the Agency in the direction of training part of the employees for strategic planning and preparation of annual programs with clearly defined goals, indicators, budgeting, and financial planning.

5. Internal organization of the Agency for the Protection of the Right to Free Access to Public Information and Human Resources

5.1. Existing organizational setup

The legal acts of the Commission for Internal Organization and Systematization date from 2015. According to the Regulation on Internal Organization of the Secretariat of the Commission for the Protection of the Right to Free Access to Public Information no. 01-535/2 of 31.12.2015, the organization of the Commission is shown in the diagram below and it contains a Commission, a Department for financial affairs, a General Secretary, a Secretariat, and two departments, each with two sectors:

Figure no. 9 - Commission Organogram



According to the existing Regulations for the systematization of jobs (adopted in December 2015 and amended and supplemented in June and September 2016), a total of 29 work positions are projected. The real situation at the time of performing this analysis indicates 18 filled work positions, of which 3 executors are for a fixed time, two are part-time of 4 hours, and 11 are unfilled positions.

Table no. 6 - Downloaded from: Annual report on the data from the register of employees in the public sector 2019 (MISA)

Independent state bodies	Civil servants and other types of officials	Auxiliary technical persons	TOTAL
AFAPI	18	0	18

5.2. Analysis of the acts for internal organization and systematization of the Agency's workplaces

The acts of the Commission were adopted according to the needs and the way of operation of the Commission. The agency is a completely new entity that has additional competencies and a new way of management that in itself imposes the need for new acts for organization and systematization. Namely, a complete transformation of the body was made from a collective body to an independent body, where a director and a deputy director were appointed. Apart from a change in the way of management, the Agency also receives new competencies and it is necessary to make a new organizational arrangement and an appropriate systematization of the jobs that will be in accordance with the needs of the Agency.

At the time of the preparation of the FA, there is a mixture of the old systematization and organization with the appointment of new foreign bodies, according to the Law. This duality does not provide an opportunity for effective work, because we have an organizational setup for a collective system, and today it is an uncooperative system, so for those reasons, it is necessary to harmonize the acts for the organizational setup and systematization of the Agency. Harmonization is required from both a legal and a functional point of view.

In order to understand the situation with the Agency's human resources, a table was created that reflects the current situation. According to the current situation, 20 people are employed in the Agency, including the Director and the Deputy Director. According to the structure of education, the Agency employs

Table no. 7 Degree of education of employees

Level of education	Number of employees
VII A - master from 60-120 credits	4
VII B - master 60 credits	
VI A - first cycle 240 credits	10
VI B - first cycle 180 credits	2
V A - vocational studies 60 -120 credits	
V B - post-secondary education	
IV - secondary education 240 credits	4

III - secondary education 180 credits	
II - professional education	
I - basic education	
TOTAL	20

The table shows that out of 20 employees, 16 have a high education while 4 have a secondary education, which means that 75% of the employees have high education.

Бр.	Сектор и одделение	Работно место	Име и презиме	Поволно место (Да-Не)	Вкупен стаж, вкиси само број (години)	Квалификација на извршителот		
						Степен на образование МРК (македонска рамка на квалификација)	Вид на едукација - опис на завршено образование (според дипломата)	Јазик/и кои ги познава
1		Директор		да	22 години	VI A - прв циклус 240 кредити	Дипломиран правник	македонски, англиски
2		Заменик директор		да	24 години	VI A - прв циклус 240 кредити	Дипломиран новинар	албански, македонски и англиски
3	Одделение за финансиски прашања	Генерален Секретар		не				
4		Раководител на Одделение за финансиски прашања		не				
5		Советник за буџетска контрола		не				
5		Помлад соработник за планирање и следење на буџет	Бијана Пушева	да	8 години	VI A - прв циклус 240 кредити	Економски Факултет, насока Е-Бизнис – Дипломиран економист	македонски, англиски
6		Помлад соработник за планирање и следење на буџет	Михајло Након	да	5 години	VI A - прв циклус 240 кредити	Економски факултет -Дипломиран економист	македонски англиски
7		Помлад референт за материјално финансиско работење	Насер Демиров	да	24 години		Средно економско, економски техничар	ромски , македонски
8	Сектор за спроведување на постапка по жалби, правни, општи, едукативни и аналитички работи	Раководител на Сектор		не				
9		Помошник-раководител на Сектор		не				
10	Одделение за спроведување на постапка по жалби, правни и општи работи	Раководител на Одделение		не				
11		Советник за спроведување на постапка по жалби	Цветан Станоески	да	28 години	VI A - прв циклус 240 кредити	Правен факултет -Дипломиран правник	македонски и англиски
12		Советник за развој и унапредување со човечки ресурси	Реџебе Беџули	да	19 години	VI A - прв циклус 240 кредити	Филолошки факултет- Албански јазик и книжевност	албански, македонски,српски
13		Помлад соработник за постапување по жалби	Маџфирете Морина Сулејмани	да	8 години	VII A - магистер со 60-120 кредити	Правен факултет - Дипломиран правник	албански, македонски и англиски
14		Помлад соработник за постапување по жалби	Индри Хоџа	да	9 години	VI A - прв циклус 240 кредити	Правен факултет-Дипломиран правник	албански,македонски, англиски и турски.
15		Помлад соработник за постапување по жалби	Дарко Ал Блана	да	5 години	VII A - магистер со 60-120 кредити	Правен факултет - Дипломиран правник, М-р по казнено право (300 кредити)	македонски, англиски
16		Помлад соработник за постапување по жалби		не				
17		Помлад референт-технички секретар на претседателот	Стојка Накова Василева	да	17 години	VI B - прв циклус 180 кредити	Факултет за менаџмент, Дипломиран менаџер по човечки ресурси	македонски, англиски и влашки
18		Самостоен референт - архивар	Александра Атанасовска Горѓиевска	да	11 години		Средно уотететско - хотелско-туристички техничар	македонски, англиски
19		Помлад референт за административни работи	Ферихан Абуџа	да	6 години		Средно трговско, техничар за трговија и маркетинг	ромски,македонски и англиски
20	Одделение за аналитика и едукација на барателите и имателите на информации од јавен карактер	Раководител на Одделение		не				
21		Помлад соработник за аналитички работи	Горјан Гилевски	да		VII A - магистер со 60-120 кредити	Правен факултет - Дипломиран правник, М-р по право на интелектуална сопственост	македонски, англиски
22	Сектор за соработка со имателите на инф. информирање на јавноста и меѓународна соработка	Раководител на Сектор		не				
23	Одделение за соработка со имателите на информации и информирање на јавноста	Раководител на Одделение	Жорж Поповски	да	32 година	VI A - прв циклус 240 кредити	Филолошки факултет, отсек/група новинарство Дипломиран новинар	македонски,англиски
24		Соработник за одржување на веб-страницата		не				
25		Помлад-соработник преведувач	Ваљон Мустафа	да	13 години	VII A - магистер со 60-120 кредити	Филолошки факултет. М-р по Албански јазик и книжевност	албански, македонски и англиски
26		Помлад соработник за соработка со имателите на информации	Оливер Серафимовски	да	11 години	VI A - прв циклус 240 кредити	Филозовски факултет. Дипломиран професор по историја	македонски, англиски
27	Одделение за меѓународна соработка на полето на слободниот пристап до информациите од јавен карактер	Раководител на Одделение	Симона Палоска	да	4 години	VII A - магистер со 60-120 кредити	Правен факултет - Дипломиран правник. М-р по правосудство и М-р по политички науки	македонски,англиски
28		Соработник за одржување на веб страна		не				
28		Помлад соработник за меѓународна соработка со информациите	Александра Стојановска	да	11 години	VI A - прв циклус 240 кредити	Дипломиран Економист по Маркетинг и Рекламирање	ТОЕФЛ, македонски,англиски и српски
29		Виш референт за административно-стручни работи	Елена Арсева	да	2 години		Средно образование -гимназија	македонски, англиски

According to the type of education, there are 7 lawyers employed in the Agency, of which 3 have master's degrees and 4 have law graduates. Furthermore, there are 4 economy graduates with different specializations, 2 journalism graduates, one history graduate, 2 philology graduates, and 4 employees with secondary education.

Table no. 8 - Type of education of employees

Completed education	Number
Master of Laws	3
Law graduate	4
Graduated economists	4
Graduated historian	1
Graduated journalist	2
Graduated philologists	2
Secondary education	4
TOTAL	20

Regarding the foreign language competencies, as many as 16 of the employees have knowledge in English, but the Agency did not specify the level of knowledge or reliable evidence that can confirm the level of competence of the English language. Among other languages, Albanian is the most prevalent, followed by Serbian, Turkish, Roma, and Romanian.

From the point of view of filling management positions, the situation is as follows:

Table no. 9 - Filling of management positions in the Agency

Management positions filled	Unfilled management positions
<ol style="list-style-type: none"> 1. Director, 2. Deputy Director, 3. Head of the Department for Cooperation with Information Holders and Public Information, 	<ol style="list-style-type: none"> 1. General Secretary 2. Head of the Financial Affairs Department 3. Head of the Department for the Implementation of Procedures for Complaints, Legal, General, Educational, and Analytical Matters

<p>4. Head of the Department for International Cooperation in the field of Free Access to Public Information</p>	<p>4. Deputy Head of the Department for Complaints, Legal, General, Educational, and Analytical Procedures</p> <p>5. Head of the Department for Complaints, Legal and General Affairs</p> <p>6. Head of the Department for Analytics and Education of Requesters and Holders of Public Information</p> <p>7. Head of the Department for Cooperation with Information Holders, Public Information and International Cooperation in the field of Free Access to Public Information</p>
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From the table above, it can be determined that out of a total of 11 management positions, only 4 have been filled. The appointment of the General Secretary, two department heads, one assistant department head, and three department heads is missing.

5.3. Correct placement of organizational units (sectors and departments) of the Agency: current situation, need and challenges

The internal organization of the Agency was briefly presented in the previous text. As mentioned, it is subject to the regulation of the Regulation on the internal organization of the Secretariat of the Commission for the Protection of the Right to Free Access to Public Information (hereinafter: the Regulation on Organization) from 2015 with no. 01-535/2. In this part, attention is paid to the quality of the Organization Rulebook, that is, attention is paid to the question of whether the organizational units are correctly set up. However, in this context, it is necessary to take into account the Regulation on the systematization of jobs (adopted in December 2015 and amended and supplemented in June and September 2016). Namely, these two acts are observed as a whole - even if the Organization's Regulations are perfectly prepared, the overall functioning of the Agency may be ineffective in the case of poor-quality Regulations for the systematization of workplaces. Vice versa, the Rulebook for systematization may be well-made, but the inadequate arrangement of the organizational units in the Rulebook for the organization will lead to difficulties in the daily execution of operations in the Agency.¹³

¹³ It is for this reason, for example, that the Serbian Commissioner for Information of Public Importance and Protection of Personal Data (Serb. Commissioner for Information of Public Importance and Protection of Personal Data) has a single Rulebook for the internal organization and systematization of workplaces (<https://www.poverenik.rs/sr-yu/aktuelni-akti.html>, last access on 04/29/2020). The same is the case with the Croatian Information Commissioner (Croatian: Povjerenik za informacije), whose rules are available at: <https://www.pristupinfo.hr/wp-content/uploads/2018/10/Pravilnik-o-unutarnjem-redu-Povjerenika-za-informiranje-2016.pdf> (last access on 29.04.2020).

As can be seen from the illustration attached above, two sectors with two departments and one independent department have been established within the Secretariat of the Agency. We consider them below.

5.3.1. Department for Complaints, Legal, General, Educational, and Analytical Procedures

The Department for Complaints, Legal, and General Affairs, as well as the Department for Analytics and Education of Applicants and Holders of Public Information, is part of the Department for Complaints, Legal, General, Educational, and Analytical Procedures.

Table no. 10 – Presentation of the departments in the relevant sector

Department for Complaints, Legal, General, Educational and Analytical work (the department is managed by a head of te department head and a deputy-head of the department)	
Department for complaints, legal and general affairs	<p>Within this department, 10 jobs are planned, namely:</p> <ul style="list-style-type: none"> <input type="checkbox"/> 1 manager; <input type="checkbox"/> 2 advisors (1 for the implementation of the complaints procedure and 1 for the development and promotion of human resources); <input type="checkbox"/> 4 junior associates (please note that all employees are junior associates for dealing with complaints); <input type="checkbox"/> 1 independent clerk-archivist <input type="checkbox"/> 2 junior clerks (1 is the director's technical secretary, 1 is a junior clerk for administrative affairs);
Department for analytics and education of applicants and holders of public information	<p>Within this department, two jobs are foreseen, namely:</p> <ul style="list-style-type: none"> <input type="checkbox"/> 1 Manager; <input type="checkbox"/> 1 Junior Associate for Analytical Affairs

The Department for Complaints, Legal and General Affairs, as its name suggests, performs the following tasks: (1) collects and prepares materials for the procedure following the requester's complaints; (2) prepares proposals for solutions and conclusions following the complaints of the requesters of public information; (3) provides assistance to information requesters in relation to the appeal procedure implemented by the Secretariat of the Agency; (4) gives instructions to the information holders regarding the actions following the requests of the requesters; (5) provides instructions and data for an easier access of applicants to public information possessed by the holders of information; (6) prepares by-laws, instructions and

forms arising from the legal competence of the Agency; (7) continuously monitors the regulations regarding the regulation of issues from this area as well as the application of international agreements and conventions that the Republic of North Macedonia has ratified which refer to the activity of free access to information; (8) prepares an opinion on proposals for laws and other acts regulating free access to information for which the Agency issues opinions; (9) participates in the preparation of the Annual Report on the work of the Agency which is submitted to the Assembly of the Republic of North Macedonia every year; (10) provides legal opinions to the organizational units in the Secretariat of the Agency regarding the monitoring of the implementation of the Law; (11) prepares periodic reports on the department's work as needed; (12) cooperates with other departments in the Secretariat of the Agency.

The Department for Analytics and Education of Applicants and Holders of Public Information: (1) records the complaints received at the Agency, as well as the requests for free access submitted to the Agency - when the Agency appears as the holder of information; (2) prepares an individual analysis of the received complaints in relation to the applicant, holder, type of complaint, actions taken; (3) prepares a complete analysis of the complaints based on the individual analysis of each of them; (4) proposes measures to improve the appeal procedure in terms of efficiency, economy and expediency based on the prepared analyses; (5) at the request of the director of the Agency, undertakes activities on the education plan of information holders in order to provide better access to information to applicants; (6) prepares training workshops for the holders of the information; (7) cooperates with the holders of the information in terms of providing assistance in exercising the right of free access to the information; (8) participates in the preparation of the Annual Report on the work of the Agency, which is submitted to the Assembly of the Republic of North Macedonia; (9) prepares periodic reports on the department's work as needed; (10) cooperates with other departments in the Secretariat of the Agency.

Observing these two departments, we come to the first remark regarding the Regulation on the organization of AFAPI, which is that the Regulation is contrary to the Decree on the principles of the internal organization of the state administration bodies (Official Gazette No. 105/2007, 149/2011 and 166/2015), more precisely in Article 6. For that reason, we are moving Article 6 from the corresponding decree below.

Frame no. 10 – Article 6, Paragraph 2 of the Decree on the principles of the internal organization of state administration bodies

(1) Departments are formed in the bodies for the immediate execution of normative legal, human resource management, expert analytical, administrative, managerial-supervisory, informational-documentary, informational-communication, operational, material-financial, investment, information technology, expert-administrative, etc.

(2) A section is established if **at least five jobs can be systematized, including the head of the department** for the implementation of a certain function.

(3) The section is managed by a head of the sector, who is responsible for their work to the head of the department. In case of the absence or incapacity of the head of the sector, the department is managed by a professional civil servant with the highest rank in the department, who is determined by the head of the department.

(4) As an exemption to paragraph (2) of this article, in bodies with fewer than 50 systematized jobs, a department may be constituted if at least three positions, including the head of the department, are systematized for the implementation of a specific function.

Consequently, it is obvious that the Department for Analytics and Education of Requesters and Holders of Public Information does not comply with this Government Decree. Only two work positions are foreseen in that department, including the manager. At the very least, taking into account the last paragraph of Article 6 of the cited decree, three jobs should be provided.

Of course, the Decree on the principles of the internal organization of state administration bodies does not bind the Agency, which is not a state administration body, but an independent state body that is answerable only to the Assembly of the Republic of North Macedonia. However, it should be taken into account that it would still be desirable to comply with the provisions of this decree, considering that they are applicable to hundreds of state administration bodies that, like the Agency, face the question of how to organize their internal organizational units. In fact, Article 6 itself is very logical – if not even 3 jobs can be systematized for a given function, why would the existence of a section be necessary? All the more so that in the case of the Agency, within the Department for Analytics and Education of the Requesters and Holders of the Information, the planned jobs have not even been filled, so at the moment, there is no head executive, but only 1 junior associate for analytical work.

In addition, when talking about the Department for the implementation of procedures for complaints, legal, general, educational, and analytical work, certain illogicalities in the functions, that is, the work performed by its departments, are noticed. Namely, if you look at the work carried out by the Department for Appeals, Legal and General Affairs, you will first notice that a large part of them, in essence, implies education of the holders and requesters of information (which, in turn, should include in the scope of the other department). To make this note easier to understand, we attach the corresponding functions and operations in a table.

Table no. 11 – Similar (overlapping) functions of the two sectors within the Department for Complaints, Legal, General, Educational, and Analytical Procedures

Department for Complaints of Information Requesters, Legal, and General Affairs:	Department for Analytics and Education of Requesters and Holders of Public Information:
<ul style="list-style-type: none"> <input type="checkbox"/> gives instructions to the holders regarding the actions following the requests of the claimants; <input type="checkbox"/> provides instructions and data for easier access of applicants to public information; <input type="checkbox"/> continuously follows the regulations related to the regulation of issues in this area as well as the application of international agreements and conventions that the Republic of North Macedonia has ratified, which refer to the activity of free access to information. 	<ul style="list-style-type: none"> <input type="checkbox"/> proposes measures to improve the appeal procedure in terms of efficiency, economy, and expediency based on the prepared analyses; <input type="checkbox"/> cooperates with the holders of information in terms of providing assistance in exercising the right of free access to information.

Thus, the question is logically raised, how far does the work of one sector extend, and where does the work of the other sector begin? If the Section for the implementation of procedures for the complaints of information requesters, legal and general affairs "gives instructions and data for easier access to public information to holders and requesters", then what does "cooperation with holders of information in relation to providing assistance for the exercise of the right of free access" imply, which, in turn, is the competence of the other section? In addition, isn't the "continuous monitoring of regulations [...]" related to the right of free access to public information, in its essence, an analytical matter? It is clear why this function was assigned to the section that deals with legal matters - starting from the logic that harmonization with international conventions is primarily a legal matter. Following regulations at the international level, it is essentially an analysis and a serious one at that. Here we particularly highlight the harmonization of our legislation (as well as administrative practices) with the law of the European Union.

From what has been stated so far, the need for a clearer distinction of the tasks within this sector can already be seen. It needs to be restructured so that it will be clearer what the task of each of the sections is.

In the end, we point out two more inconsistencies in the Rules of the Organization when it comes to the Sector for implementing procedures for complaints, legal, general, educational, and analytical procedures. First, things related to the use of information and communication technologies are missing here. It refers both to the use of ICT for conducting appeal procedures,

and from the aspect of conducting statistical-analytical operations (which, evidently, would be much easier if the collection of the information were to a greater extent automated). Secondly, it is noted that in the competencies of the Sector of Analytics and Education of Requesters and Holders of Public Information, it is stated that educational activities are undertaken at the request of the President. This provision should be appropriately amended and supplemented so that the educational initiatives will be scheduled every year in the training plan of the Agency. However, we will pay more attention to this issue in the following part of this analysis.

5.3.2. Sector for cooperation with the holders of information, informing the public and international cooperation in the field of free access to public information

Even when reading the very name of this sector, one question arises - wasn't cooperation with information holders and international cooperation in the field of free access already, at least in one part, covered within the framework of the previous sector? However, for the purpose of in-depth analysis, we again pay attention to the functions of this sector and the way they are divided between the two sections.

Table no. 12 – Display of departments in the relevant sector

Department for cooperation with the holders of information, informing the public and international cooperation in the field of free access to public information (the position of head of department is envisaged, but not of assistant head)	
Section for cooperation with the holders of information and informing the public	Within this department, 4 jobs are planned: <ul style="list-style-type: none"> <input type="checkbox"/> 1 manager; <input type="checkbox"/> 1 collaborator to maintain the website <input type="checkbox"/> 1 junior associate translator <input type="checkbox"/> 1 junior associate for cooperation with the holders of information
Section for international cooperation in the field of free access to public information	Within this department, three jobs are foreseen, namely: <ul style="list-style-type: none"> <input type="checkbox"/> 1 manager; <input type="checkbox"/> 1 junior associate for international cooperation with information <input type="checkbox"/> 1 senior officer for administrative and professional matters

The section for cooperation with the holders of information and informing the public: (1) prepares and publishes a list of the holders of public information with data on officials on the Agency's website; (2) continuously monitors and enters changes in the list of information of the Agency; (3) regularly communicates with the information holders to update the basic contact

details of the information holders; (4) prepares news, reports and other content about the work of the Agency and regularly updates them on the website; (5) carries out translations of individual news, information and other content in the Albanian language and places them on the website (Albanian version); (6) participates in the preparation of brochures, flyers and other materials for information requesters and holders; (7) records, processes and stores the annual reports of the holders of information; (8) provides professional assistance and clarifications to the holders of information when filling out the Annual Reports; (9) monitors the official e-mail of the Agency and for its needs communicates electronically with other institutions, legal and natural persons; (10) prepares and delivers urgent notices for the appointment of officials and for annual reports to the holders of information; (11) occasionally prepares announcements and invitations for individual events and delivers them to the media; (12) occasionally provides an overview of European experiences and practice in the field of free access to public information; (13) makes suggestions for improving the Agency's website; (14) participates in the preparation of the Annual Report on the work of the Commission which is submitted to the Assembly of the Republic of North Macedonia annually; (15) prepares periodic reports on the department's work as needed; (16) cooperates with other departments in the Secretariat.

The section for international cooperation in the field of free access to public information, in turn: (1) performs preparatory work in connection with international cooperation in the field of free access to public information; (2) participates in the implementation of joint projects with international organizations; (3) cooperates with the authorities of other countries and institutions in the field of free access to public information; (4) exchange opinions, especially on issues of practice and results in other countries regarding the implementation of the Law on Free Access to Public Information; (5) participates in the preparation of the Annual Report on the work of the Commission, which is submitted to the Assembly of the Republic of Macedonia every year; (6) prepares periodic reports on the section's work as needed; (7) periodically performs translations of individual contents in English that are updated on the Agency's website (English version); (8) cooperates with other departments in the Secretariat.

Taking into account the above, these sections, unlike those previously analyzed, are structured in accordance with the Decree on the principles of the internal organization of state administration bodies (in terms of the number of planned jobs). However, in terms of the combination of functions that are provided within each of the departments, there is a certain inconsistency.

Namely, the question arises as to whether public relations, communication with information holders, and preparation of the list of information holders fall within the framework of the same organizational unit (in this case the Department for cooperation with information holders and informing the public). Relations with the public imply familiarizing citizens with the work of the Agency, but also with:

- their rights arising from the Law on Free Access to Public Information;

- the meaning of transparent operation;
- what information is considered public and what is not;
- other similar procedures.

On the other hand, the preparation of the list of information holders is, as already stated in the previous text (see: *1.1.1. Determination of the list of information holders*) one of the essential functions of the Agency, which is much more closely related to the conduct of appeal procedures than it is to public relations. In addition, it is evident from the mentioned competencies that the Sector for cooperation with the holders of information and informing the public has an educational role in one part, that is, it "participates in the preparation of brochures, flyers and other materials for the requesters and holders of information". From there, the question can be raised as to what the practical division of tasks would be between this section and the Sector for Analytics and Education of Public Information Requesters (in whose responsibilities, however, the preparation of didactic materials for information requesters and holders was not mentioned). Finally, the Sector for cooperation with the holders of information and informing the public, according to the Rules of Organization, also follows the European legal framework related to the right of free access to public information. Thus, to a certain extent, it overlaps with the Sector for the implementation of procedures for the complaints of information requesters, legal and general affairs. In order to make the display more vivid, we again offer a table.

Table no. 13 – Overlapping functions of the section for cooperation with the holders of information and informing the public with other sections (in the Sector for complaints, legal, general, educational and analytical procedures)

Department for Cooperation with the Holders of Information and Informing the Public	Department for Complaints of Information Requesters, Legal and General Affairs:	Department for Analytics and Education of Requesters and Holders of Public Information:
<ul style="list-style-type: none"> □ participates in the preparation of brochures, flyers and other materials for information holders; □ occasionally provides an overview of European experiences and practice in the field of free access to public information 	<ul style="list-style-type: none"> □ gives instructions to the holders regarding the actions following the requests of the requesters; □ provides instructions and data for easier access of applicants to public information; 	<ul style="list-style-type: none"> □ proposes measures to improve the appeal procedure in terms of efficiency, economy and expediency based on the prepared analyses; □ cooperates with the holders of information in terms of providing

	<input type="checkbox"/> continuously monitors the regulations related to the regulation of issues from this area as well as the application of international agreements and conventions that the Republic of North Macedonia has ratified, which refer to the activity of free access to information.	assistance in exercising the right of free access to information.
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The way in which the functions of each of the mentioned departments are defined leads to the conclusion that there could be confusion regarding their work. It is clear that the Agency is not a body that is bulky in its structure, so possible confusion will be overcome through daily communication of employees and the development of informal relations. However, in the long term, such overlapping of activities of sectors and departments is not permissible according to the Rules of the Organization.

Finally, the tasks of the Department for International Cooperation in the field of free access to public information are essentially clear. What needs to be addressed is how the exchange of views, especially on issues of practices and results in other countries regarding the implementation of the legal framework of free access to information will be translated into occasional reviews of European practices (competency of the Department for Cooperation with the holders of information and informing the public) and the continuous monitoring of the regulations regarding the regulation of issues of free access to public information (competence of the Department for complaints of information requesters, legal, and general affairs).

5.3.3. Department of Financial Affairs outside the Departments

Within AFAPI there is also a Department for Financial Affairs which is independent and reports directly to the director, i.e. the deputy director.

Table no. 14 – Presentation of the Financial Affairs Department

Department of Financial Affairs	Within this department, 5 jobs are planned, namely: <ul style="list-style-type: none"> <input type="checkbox"/> 1 manager; <input type="checkbox"/> 1 advisor for budget control; <input type="checkbox"/> 2 junior associates for budget planning and monitoring;
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	□ 1 junior officer for material financial operations
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Pursuant to the Rules of Organization, the Department for Financial Affairs: (1) monitors and applies laws and by-laws in the area of budgetary and material-financial operations; (2) prepares a plan for establishing financial management and control as well as a methodology for implementing the plan; (3) prepares the Draft Budget of the Agency and its amendments; (4) monitors the implementation of the Agency's Budget; (5) controls the execution of established policies and operational management; (6) manages, monitors and controls the state and movement of funds determined by the Budget; (7) prepares strategic plans of the Agency and amendments and additions to strategic plans; (8) establish/abolish *ex ante* financial control by performing a risk assessment and updating procedures for work processes in the field of financial management and control; (9) prepares annual, quarterly and monthly financial plans for the Agency's Budget; (10) prepares a financial plan for the execution of the Budget; (11) performs accounting records for the execution of the Budget and preparation of the annual account; (12) prepares, receives, liquidates, and controls accounting documentation; (13) calculates and pays salaries to the employees of the Agency; (14) gives opinions on the proposal of activities prepared by other organizational units of the entity and the proposal of acts of other entities that have or may have financial implications for the Agency's Budget; (15) prepares information and reports on the implementation of the Budget and other financial matters; (16) prepares an Annual Plan for public procurement, realization and monitoring of public procurement of goods, services and works for the needs of the Agency for the current year in accordance with the approved funds in the Budget; (17) provides professional and technical assistance to the Public Procurement Commission regarding the implementation of public procurement procedures and other matters that will be determined in the scope of competences in accordance with laws and other regulations.

What is noticeable in relation to finances is that there are no accountants employed within this department, nor is there a job planned. The Agency's accounting services are provided by an external accounting firm.

5.3.4. Need for a new internal organization

According to what has been highlighted so far, it is almost evident that AFAPI needs reorganization, that is, it is necessary to adopt a new Organization Rulebook.

First, within the existing organizational structure there is a discrepancy in tasks – namely, some sections have significantly more tasks on a daily basis than others.

Secondly, in one of the sections that were mentioned in the previous text, only two work positions are projected. This practice is not appropriate. If no need for more employees can be found in a given section, then the question arises, why would it be necessary to have a section at all? On the other hand, in this particular case, it is about the section in charge of analysis and education - and as mentioned in the text above, the training will represent one of the essential

activities of the Agency, especially in accordance with the Law on Free Access to Public Information from 2019.

Thirdly, in the above narrative part, but also in the tables, it was shown that a large part of the functions and tasks of the sections (in the same or in different sectors) overlap (at least according to the letter of the Organization Regulations). This situation is inadmissible, especially considering that one of the basic prerequisites for successful functioning is that each of the employees knows exactly their job, that is, they know what their tasks are.

Fourth, no single organizational unit is in charge of ICT, which is necessary. It is not enough to have only one person in charge of maintaining the website, because the Agency should have software that will facilitate not only the decision-making procedure for complaints (enabling facilitated internal communication and data storage), but also analytics.

Fifth, no organizational unit is in charge of carrying out the work related to the violations. This is understandable, considering that the predecessor of AFAPI did not have misdemeanor powers. However, it is now necessary for one organizational unit to be in charge of matters related to misdemeanor procedures.

5.3.5. Proposal for a new internal organization

According to the above-explained anomalies in the existing internal organization of the Agency, within the framework of this functional analysis, restructuring, that is, modernization of the internal organization is proposed.

The proposal is enclosed in the following box.

Frame no. 11 - Proposal for a new organizational structure of the Agency

- General Secretary
- Department of Financial Affairs
- Administrative-legal and general affairs department
 - Administrative Procedures Sector
 - Legal and General Affairs Sector
- Cooperation, transparency, and education department
 - Public Relations, Transparency, and Education Sector
 - Cooperation, ICT and Analysis Sector
 - International Cooperation and Projects Sector

For a better understanding of this new organizational structure, an organogram is also highlighted below.

Figure no. 10 - Proposed organization chart of the Agency

- DIRECTOR
- - DEPUTY DIRECTOR
 - GENERAL SECRETARY
 - DEPARTMENT OF FINANCIAL AFFAIRS
 - DEPARTMENT OF ADMINISTRATIVE-LEGAL AND GENERAL AFFAIRS
 - DEPARTMENT OF ADMINISTRATIVE PROCEDURES
- LEGAL AND GENERAL AFFAIRS SECTOR
- COOPERATION, TRANSPARENCY AND EDUCATION SECTOR
- PUBLIC RELATIONS, TRANSPARENCY AND EDUCATION SECTOR
- COLLABORATION, ICT AND ANALYSIS SECTOR
- INTERNATIONAL COOPERATION AND PROJECTS SECTOR

The idea behind this proposal is to better systematize the obligations of the Agency itself, in accordance with the Law on Free Access to Public Information from 2019. In addition, the principles laid down in the Decree on the principles of the internal organization of state administration bodies are taken into account (Official Gazette No. 105/2007, 149/2011, and 166/2015).

First, all issues that imply the implementation of legal norms would fall under the Department for General and Legal Affairs. Thus, the first Section for the implementation of administrative procedures, as its name suggests, implements the procedures for complaints in accordance with the Law on Free Access to Public Information and misdemeanor cases. The general affairs and human resource management are listed in the second Section. That, in the simplest terms, means that within this Section are all the tasks that imply:

- coordination and administrative tasks related to human resources;
- archive;
- reception and forwarding of mail;
- safety, hygiene, etc.

Practically speaking, the Sector for General and Legal Affairs and Human Resources Management takes care of the rights and obligations of the employment relationship, but also of the smooth functioning of the Agency on a daily basis.

The second Sector, on the other hand, is in charge of relations and communication with the public, education, cooperation with national institutions in the state, the non-governmental sector, academia, and other stakeholders in the system of free access to information, information technologies, analysis and international cooperation, and developing and managing international projects. Within its framework, the list of information holders will be maintained and updated. It foresees a total of three sectors. First, a Public Relations, Transparency, and Education Sector will be introduced through which the Agency will develop public relations with the aim of raising public awareness and knowledge among citizens related to the right to free access to public information. In addition, the Sector in which the training and other educational activities are planned can most easily plan the relations with the public in the direction of spreading the messages and conclusions from each training or other event. The department for cooperation, ICT, and analysis cooperates with the holders of information, with those seeking public information, with NGOs and other legal entities, updates the list of holders, participates in the preparation of the Agency's annual reports, ensures the smooth functioning of the information communication equipment of the Agency, conducts more analyzes on different topics and the like. The third Sector for international cooperation and projects, which works on the development of bilateral and regional relations between the Agency and the institutions of this kind in the region, and more broadly, the development and management of international projects in this area.

5.4 Professional development of the Agency's employees

Human capital is the most important asset of any organization. The quality of the employees also determines the quality of the organization's operations. For those reasons, every organization pays great attention to the selection of suitable personnel and constantly works on improving the personnel.

From the previous experience in the Commission, it is not possible to define the presence of a designed system for the professional development of staff. There was no assessment of the abilities and qualifications of the employees in relation to the tasks they perform, and no plan was made for the training and professional development of the employees. According to the statements from the conducted survey, very few of the employees attended professional trainings outside the Commission, and also the trainings were not conducted even inside the Commission itself.

Through the analysis of the answers to the survey, the largest number of employees declared that they needed professional trainings and that they would like to attend them, but that they did not have enough opportunities for it.

It is common for the person in charge of human resources management to take care of determining the profile of the employees according to the needs of the jobs and the activities that the employees will perform. This is a complex task that must be carried out by any successful organization, which consists of defining a job profile, necessary qualifications, knowledge, experience, and skills that the executor should possess. The recruitment and selection of the best candidates for the job is done based on this profile. The person responsible for human resources also monitors the development and plans the professional development of each of the employees in order to maximize the effects of his work.

The mentioned activities were not carried out within the scope of the Commission's work so far, which of course, affects the quality of education and training of the staff in the Agency.

Recommendations for professional development of the Agency's employees:

The person in charge of human resources management should be actively involved in creating the organizational structure of the Agency and defining the needs of each workplace. The work and results of the Agency's employees should be constantly monitored and improved. Employees should also be provided with a motive for advancement by promoting them to higher jobs, if they meet the prescribed legal criteria.

The agency should prepare a long-term plan for employee training, which will be divided into annual plans. The plan should define the goals to be achieved with the trainings, the method of measuring the effects of each training, the method of conducting the training, the methodology, topics, materials for the training, the trainers, and the budget by year.

Every year, the person responsible for human resources should give a report to the Director on how the executors perform their work tasks in terms of volume of work and quality of work, for which it is necessary to develop appropriate criteria according to which the performance of the employees' work will be assessed.

5.5. Capacities of the Agency for conducting trainings

According to the reports of the Commission for the last 5 years, the Commission constantly organized trainings and promotional events. The trainings were mainly aimed at the holders of information, but also at the users of public information.

According to the answers of those surveyed in the Agency, there is no clear procedure and records for the trainings that are organized, so it is not entirely clear how many students attended the trainings, whether they were satisfied with the trainings, what are their suggestions for new trainings, nor an assessment of whether the trainings contributed to improve the awareness of public information requesters. The commission did not have a clear plan for training, nor a defined budget for this purpose.

Most often, the organized trainings were under the auspices of the OSCE or the TAIEX instrument of the EU. The employees of the Commission were part of the training team.

From the answers of the employees and the reports, it can be concluded that the Agency does not have a special training program, nor specially trained personnel who will carry out training.

Previously, we already talked about the Agency's competence to conduct trainings, that is, to conduct educational activities on the territory of the entire country. The reason why this competence of the Agency stands out in this place, that is, why it is given special attention, is its importance in the context of the overall transparency in the country. Namely, the successful implementation of trainings will mean:

- strengthening the knowledge and awareness of citizens, thus creating greater pressure on the holders of information to independently and proactively publish data (i.e., to fulfill the obligation for the so-called active transparency);
- reduction in the number of submitted requests for access to information, i.e. submitted complaints (if the holders of information fully implement their obligation to proactively publish data, then interested natural or legal persons will not need to submit requests - automatically, this implies fewer complaints also);
- performing the Agency's preventive role without the need to resort to sanctioning mechanisms (which should always be perceived as the last available means).

However, in the past period, the Commission failed to successfully implement its educational role. Within its framework, there is a Sector for analytics and education of applicants and holders of public information, but in that department, only two jobs are provided - a manager and a junior associate - of which only the second one has been filled. Of course, in the context of the implementation of trainings by AFAPI, it is not only necessary to have good training plans and teaching materials, but also to build a partnership relationship with the holders of information; otherwise, the officials themselves will not be interested in attending the trainings.

If one studies the annual reports of AFAPI, that is, of CPRFAPI,¹⁴ it is possible to determine how many trainings have been conducted over the years (we take the last 5 as reference). We present them in a table.

Table no. 15 – Trainings conducted until the 2019

Year	Number of trainings	Participants	Is the training independently organized and conducted or in cooperation (yes/no)?
2019	4	80	In cooperation with the OSCE Mission in Skopje
2018	6	/	In cooperation with the OSCE Mission in Skopje
2017	5	102	Not specified, self-assumed
2016	8	125	Not specified, self-assumed
2015	3	Over 200 individuals	It can be concluded from the report that part of the training were conducted in cooperation with the OSCE Mission in Skopje (those for officials in the local self-government units).

It is obvious that the number of persons covered by the training is relatively small (from 80 to 125) in conditions where there are more than 1200 holders of information in the country (practically speaking, the CPRFAPI did not manage to cover more than 10% of the officials assuming that each holder has one official for mediating information). Of course, it should be mentioned here that the trainings should not only be aimed at the holders but also at the applicants.

Hence, the capacity of AFAPI for conducting trainings should be significantly strengthened, and in that direction, the new internal organization is also proposed (see: previous chapter). The reasons for this situation should be found in the lack of funds intended for trainings, but also in the lack of internal capacities for the organization of trainings.

Recommendations for improving the capacities of the Agency for conducting trainings:

The agency should, first of all, produce an **analysis of the training needs** of its target groups. Based on the findings of the analysis, it should develop a multi-year program that will be implemented annually.

The training program should contain general objectives of the trainings, target groups, their specific training needs, clear training objectives for each target group, topics and content of the trainings, methodology, profile of the trainers, budget, and duration of the trainings, and, of course, the capacity for logistics and organization at the trainings.

¹⁴ Available at: <http://komspi.mk/%d0%b3%d0%be%d0%b4%d0%b8%d1%88%d0%bd%d0%b8-%d0%b8%d0%b7%d0%b2%d0%b5%d1%88%d1%82%d0%b0%d0%b8/> (last access on 04/30/2020).

A monitoring system should be established to measure the success of the trainings, to improve the knowledge and competencies of the students at the trainings, as well as to assess how and if the increased knowledge affects the achievement of the Agency's goals.

Trainers from the Agency should be further taught and attend trainer workshops to get theoretical and practical information about the learning process and how to measure the effectiveness of trainings.

5.6. Human capacities of the Agency for the Protection of the Right to Free Access to Public Information

5.6.1. Human resources at the moment

The human capacities of AFAPI are already discussed, partially, in the text where its internal organization is processed. However, there is more talk about the placement of jobs by organizational units. In this section, attention will be paid to the actual capacities of AFAPI, taking into account how many of the jobs are filled and how they are distributed.

We hereby present the filling of the jobs above in the table under serial number 9.

Thus, as already mentioned, 18 out of a total of 29 planned work positions have been filled (62%), i.e., not counting the director and the deputy director, a total of 18 people work in the Agency. Of these 18 people, 15 are employed in a regular employment relationship for an indefinite period of time, while 3 are employed for a fixed period of time, until 31.12.2020. In addition, the retirement of the HR consultant can be expected next year.

In terms of work positions, besides the problem of not being fully filled, there's the lack of management positions which is also an issue.

To begin with, the highest position (level A2) within the Agency has not been filled. The absence of a general secretary, on the other hand, has two implications. First of all, the employees do not have their own management officer to whom all employees will be accountable, and this makes management more difficult. In addition, the director and the deputy director fill the gap left by the absence of the Secretary-General, that is, they are necessarily involved in managing the day-to-day operations at the level of the Agency, which is essentially not their duty.

Second, the position of state adviser has not been filled either, which could also be a significant factor in improving communication in AFAPI and internal coordination.

Thirdly, when it comes to the heads of departments and departments, the situation is again overwhelming. None of the departments has its own head (level B2), and the only position for assistant head of department (level B3) has not been filled either. Furthermore, when it comes to heads of departments (level B4), only 3 out of 5 total planned jobs have been filled. The department for implementing the procedure for complaints, legal and general affairs, the department for analytics and education of information requesters and holders, and the department for financial issues do not have their own managers. The last one is especially important.

According to the Rulebook on Systematization, the head of the Department for Financial Affairs has complex tasks such as coordinating the budget preparation process, amending and supplementing the budget of AFAPI, coordination of the preparation of strategic plans of AFAPI, etc. The question arises as to how these tasks are performed without the presence of a management person. Of course, the heads of the other two departments are no less important, especially taking into account that it is about the essential obligations or the core of the Agency – deciding on complaints and conducting trainings.

In the end, what is observed in the analysis of human resources in the Agency is that the employees have very little room for advancement. That, in turn, is extremely important in terms of their motivation for work. Let's take, for example, the Department for implementation of the procedure for complaints, legal and general affairs. It currently provides for 10 work positions:

- 1 manager;
- 2 advisors (1 for the implementation of the complaints procedure and 1 for the development and promotion of human resources);
- 4 junior associates (all are junior associates for dealing with complaints);
- 1 independent reference-archivist
- 2 junior clerks (1 is the director's technical secretary, 1 is a junior clerk for administrative affairs).

Let's take the junior associates (level B4) as an example. Three positions have been filled so far. Each of the employees has working experience longer than 2 years. However, in the systematization itself, there is no room for their advancement. Namely, according to Article 48, para. 5, para. 2 of the Law on Administrative Officers, they can be promoted at most to the title of adviser, that is, to level B1 (which means that they can be promoted to associates and senior associates). However, in AFAPI in the specific department, only two positions for advisor are provided, which are filled, and senior associates (level B2) and associates (level B3) are not provided. Thus, these junior associates practically remain without any possibility of being promoted. It is obvious that this will affect their motivation to work in the long run.

Consequently, within the AFAPI, it is extremely important to fill the vacant jobs as soon as possible, and in addition to achieving, to the extent possible, the promotion of the existing staff who have been in the same position for many years. In fact, these two efforts are complementary.

In the end, it is necessary to note that the above-proposed changes in the internal organization of AFAPI will be reflected in the systematization of jobs (in other words, the Regulation on the systematization of jobs follows the Regulation on the internal organization). At the same time, in the new internal organization and the new systematization (it should) be taken into account that the modern functioning of the public sector implies as much digitization and automation of a large part of the processes. It contributes both in terms of transparency (for example, the automatic allocation of subjects in AFAPI is more transparent than the manual one

– regardless of how objective the approach is), and in terms of efficiency. Besides, the public sector, in contrast to the approach in the past, is increasingly positioned as a service, that is, a service to the citizens. In that connotation, strong public relations are necessary, which will be coordinated and planned by persons trained precisely for those issues.

5.7. Analysis of the Agency's functions

5.7.1 Function of the Agency for creating public policies

The agency takes care of increased and improved access of legal and natural persons to the information possessed by the holders of the information. With that, it performs an important public function and participates in creating policies for a large number of organs and bodies within the framework of public administration.

Within the scope of its planning, the Agency considers the state of affairs, previous experience and practice in sharing public information, information needs of citizens, the non-governmental sector, the business sector, the academy, and other interested parties. The agency constantly monitors the accessibility of information, and obstacles in the provision of information analyze and monitors appropriate regulation, its implementation discovers inadequacies in the regulation and makes proposals for changes to the regulation in order to facilitate the access of those interested to public information. For these reasons, this is an inter-departmental activity of great importance that includes several ministries, authorities, and institutions at the central and local levels.

The Agency, in accordance with its competencies and the Law, requires that the provisions ensuring access to public information be included in the strategic plans, programs, and action plans of the bodies. The agency controls the implementation of the general policy that easy access to public information must be ensured in the country. For this purpose, the Agency organizes itself in terms of personnel, budget, and space, prepares Guidelines for the implementation of the Law and carries out control, and, if necessary, punishes in case of non-implementation of the Law on Free Access to Information.

The agency performs the following activities in the area of creating public policies:

- Participates in the implementation of the Law and, if necessary, proposes amendments and additions,
- It carries legal acts – Guidelines for the way of implementing the Law on Free Access to Public Information
- It carries a strategy, action plan, programs, and other documents for the effective execution of the goals defined in the strategy
- Promotes the right to free access to public information.
- It controls the implementation of the legal provisions,
- Assists information holders to organize and ensure effective and efficient distribution of information by holders to requesters,

- Performs analysis of situations, and obstacles and prepares regular reports on the volume and quality of information that is delivered at the request of applicants,
- It monitors the satisfaction of the requesters regarding the manner, speed and quality of the information provided by the holders of the information,
- It cooperates with relevant international institutions, follows and adopts the latest international trends and practices and compares the situation between the RSM and similar countries in the region and beyond.

This is the most important function of the Agency and is under the authority of the Agency's senior management, which implements it in cooperation with the employed administrative officers from category B. The agency has adopted Guidelines for the implementation of the Law on Free Access to Public Information, but so far there has been no recorded impact on the laws and regulations that regulate this matter. The agency exercises control over the implementation and helps the holders of the information to ensure the availability of the information to the requesters. But these functions are not at a satisfactory level, which can be concluded from the high number of complaints, especially due to the silence of the administration.

The reports of the Commission so far mostly referred to specific activities carried out by the Commission in the previous year, without reference to the achievement of the goals defined by the SP.

So far, the Commission has not conducted an examination of the satisfaction of the applicants, as well as other stakeholders, from the availability of information, to the speed and quality of the information provided.

This function of the Agency is closely related to the international activity of the Commission, which took place through cooperation mainly with the EU through TAIEX and OSCE. The monitoring of international experiences should be incorporated into the policies of the Agency. In the past 5 years, the following international activities were observed in the operation of the Commission:

Frame no. 12 - International activities of the Commission 2015-2019

2015	In cooperation with TAIEX, the Commission organized workshops. With the OSCE, the Commission organized a study visit and realization of 4 workshops and participated in international conferences in Tirana, Belgrade, and Podgorica.
2106	The Commission participated in the IPA project on Support for access to the right to personal data protection. Memoranda of cooperation were signed with UNDP, Transparency Council from Spain. Several workshops, a promotional event, and participation in an international conference in Sarajevo were organized. Organization of the 10th anniversary of the Commission's existence, for which the employee in the department provided 3 sponsors this event (IPA, OSCE, and UNDP).

2017	<p>A promotional event and workshop were held in cooperation with the OSCE. Within the framework of the IPA project "European support for Public Administration Reform (PRA) and Statistics" a working group was formed in which the Commission also participates, then it takes part in the project "Strengthened transparency of institutions and improvement of communication between institutions and citizens and business" the community". Within TAIEX, a lecture by an international expert was organized, followed by a workshop to raise awareness of the right to free access to information, and a study visit to the Council for Transparency and Good Governance in Madrid.</p> <p>Within the framework of the CAF process, the preparation of Action Plans for all planned activities in 2016 and 2017 and the preparation of a Report on the degree of realization and performed monitoring preparation of the final report on the realization of all 32 measures were carried out.</p> <p>Participation in SRJA working groups and participation in the preparation of the material for the Draft Strategy for Reforms in Public Administration and the Action Plan, the only junior associate member of this working group</p>
2018	<p>In cooperation with the OSCE Mission in Skopje, 5 local and regional workshops were organized on the topic: "The right to free access to public information." A donation of 20,000 euros for office and technical equipment was awarded to the Commission by the OSCE. Through the TAIEX Instrument, an Expert Mission under the title: "Sanctions for holders of information" was carried out.</p> <p>Processing of data provided in the Passport Indicators for SRYJA and preparation of Reports on the same and submitted to MISA. Notification of the degree of realization of the planned activities for the Commission at the working meetings of the SRJA.</p>
2019	<p>Within the framework of the cooperation with the OSCE, four trainings were held for officials with information holders, trainings on the topic: "Implementation of the new Law on free access to information of a public nature - novelties and challenges". In November 2019, the EU-funded Project "Promoting Transparency and Accountability in Public Administration" was launched.</p> <p>The Agency is a direct beneficiary of activities contained in Component 2: Support to the Agency through activities that will focus on strengthening the Agency's institutional capacity through enhanced promotion and strengthening of the implementation of the Law on Free Access to Public Information in the system.</p> <p>The same is planned to be achieved through institutional reorganization and the production of internal regulations for work and other strategic documents, implementation of modernized IT tools for improved operational capacity, provision of improved services, increasing the responsibility and transparency of state authorities, as well as strengthening on the capacity of information holders to comply with legal obligations and EU standards. The Commission also cooperates with the Hungarian National Administration for Data Protection and Freedom of Information.</p>

Recommendations for the promotion of the function of carrying out public policies:

To strengthen the function by strengthening the resources of the Agency for its execution. This function should be strengthened by monitoring the regulation and its impact on the provision of public information to potential users. It is important to increase the cooperation with the holders of the information and the influence of the Agency on the way of organizing the provision of the information to the applicants.

The control and assistance function of information holders should be significantly strengthened by providing genuine assistance to information holders in relation to the provision of information to requesters, but also to ensure that every holder of public information meets transparency requirements and that all the necessary information is published on the websites of the holders.

The annual reports of the Agency should not only be a report on the funds spent and the activities undertaken during the past year but also a statistical database and analysis of the situations that will be needed to monitor the effectiveness and efficiency of the system of providing public information. The data should be collected in a specially made program where relevant data will be added every year and which will enable an easy search for any interested party to be able to find the necessary information in this area. For this, it is necessary to research what data will be needed by potential users and in what form it should be published.

The annual reports should also contain the degree of progress towards the achievement of the strategic goals, as well as the degree of achievement of the annual goals defined by the annual program.

5.7.2 Coordinating function of the Agency

On the one hand, the Agency follows the Government's priorities and aligns its policies with the Government's documents and priorities, where it is clearly stated that the Government is committed to building open institutions. On the other hand, the Agency coordinates a large number of authorities and holders of information. The agency follows the constitutional provisions and international resolutions according to which it performs coordination between the authorities in the country.

Frame no. 13 – Quotes from the Commission's Strategic Plan

Free access to public information is a basic human right guaranteed by the Constitution, in Article 16 states: "Free access to information, freedom to receive and share information are guaranteed"

Free access to public information is an important tool on the way to achieving full transparency and openness of institutions to citizens.

At the beginning of its establishment in 1946, the General Assembly of the United Nations placed freedom of information as a basic human right on its agenda of priorities. In Resolution 59, which was adopted and published, it is given: "Freedom of information is a basic human right and the basis for all the freedoms for which the United Nations Organization is fighting."

The very fact that every public authority possesses certain public information and has the obligation to share it upon request makes the Agency the coordinator of more than 1,300 authorities in the country, which it informs, supports, and controls, which gives it a significant coordinating function.

Within this function, the Agency performs the following activities:

1. Reports on the legal framework regarding free access to public information,
2. Gives opinions on proposals for laws regulating free access to public information,
3. It reports on strategic determinations, priorities, and goals of the Agency,
4. It supports information holders, through advice, information, and expertise,
5. Prepares and publishes a list of information holders and the officials of the information holders,
6. Control of the work of information holders,
7. Education of the holders and requesters of information,
8. Provides technical support to information holders for a unified approach (provides data entry software, reports, and analyses).

This function of the Agency is under the competence of the senior management of the Agency, which implements it in cooperation with the professional services in the Agency.

According to the reports of the Commission in the work so far, representatives of the Commission were involved in certain activities aimed at creating a legal framework, as part of the working groups. The Commission's reports have so far not mentioned the strategic goals of the Commission and the degree of their realization and analysis of obstacles that hinder the provision of availability of public information.

The list of information holders and officials is constantly updated and published on the Agency's website, which ensures transparency of the process.

The education of information holders and potential applicants is not at the desired level. Technical assistance (ICT) to the holders of information is not provided to a sufficient extent, due to the fact that they themselves do not have the sufficient IT capacity.

Recommendations for improving the coordination function:

The coordination function should be significantly improved, by making permanent contacts with the holders and users of publicly available information. Professional people in the Agency, led by the management, should constantly monitor the effectiveness of the regulation and submit proposals for improvement.

Education of holders and users needs to be significantly improved. For this purpose, a structured plan should be made in which the needs of education, ways of education, and expected effects of education will be defined.

5.7.3 Function of providing services

This function refers to the needs of citizens, the business sector, and the non-governmental sector and consists of ensuring the right of legal and natural persons to have unhindered access to the publicly available information.

Within this function, the Agency performs the following activities:

1. Conducts administrative proceedings and decides on appeals against the decision by which the holder of the information approved, refused, or rejected the request for access to information of the applicants,
2. Conducts misdemeanor proceedings through the Misdemeanor Commission, which decides on misdemeanors in accordance with the law.

These functions of the Agency are under the authority of the Director of the Agency, who implements them in cooperation with the professional services and under the authority of the Offense Commission in the Agency.

In the past two years, the function of resolving complaints was disrupted due to the lack of capacities in the Commission and thus the right of information requesters was violated, because their requests were processed inappropriately, i.e. were postponed for a longer period.

The activity of the Misdemeanor Commission has yet to begin and is in the structuring phase.

Recommendations for improving the service delivery function:

Conducting administrative procedures is a basic function of the Agency and it must provide conditions and capacities to solve the procedures with quality and within the stipulated legal deadlines. In order for the Agency to adequately deal with the influx of cases (complaints and misdemeanors), it will first need to perform a detailed analysis and **estimation of expected inflows**, taking into account the historical data, but also the changes in the regulation and their

expected impact. The infringement provisions are being introduced for the first time and are expected to have an impact on the timeliness of information holders.

To perform this function, the Agency will need to be optimally staffed, **draw up detailed work procedures** and set up adequate staff for the job. Here, the need for professional staff in the field of legal sciences, especially in the field of administrative procedure, is primarily taken into account. By strengthening the Agency's staff and increasing the number of lawyers, the quality of the Agency's decisions will also increase, and it is expected that the number of lawsuits for assessing the legality of the Agency's acts will be minimized.

The same recommendation also applies to the staffing of the Commission for misdemeanor procedures as a misdemeanor body of the Agency, which has not yet started work.

5.7.4 Support function

These are a group of functions that enable smooth, structured and planned functioning of the Agency, and this group includes regular functions such as:

1. Planning is a basic function of the Agency's administration, which enables the definition of goals, resources, procedures that will enable the successful execution of the Agency's mission and vision.

Activities:

- Development of long-term plan and annual work programs;
- Provision of the necessary resources: financial, human and material;
- Monitoring the implementation of the plan, corrective actions during execution;
- Creation and analysis of periodic reports.

Recommendations for the promotion of planning functions:

- Building agency capacities for planning and reporting and establishing clear procedures for these activities.

2. Human resource management is an important function in any organization that affects the success of the work.

Activities to be performed by this function:

- Planning of all activities that take place in the Agency;
- Determining workload by activity;
- Establishing work procedures;
- Determining work norms - required effective work time to perform each activity;

- Setting up and constantly monitoring the effectiveness of the organizational structure;
- Defining the required number and qualifications of executors;
- Employment of appropriate staff;
- Monitoring the work of employees;
- Defining a training plan according to the needs of employees;
- Defining a system for rewarding and punishing employees;
- Management of employee files, formal documents such as registration, registration and others.

Recommendations for the promotion of a human resources development function:

- It is necessary to build the capacities of the Agency in the area of human resources. This is one of the vital parts of the Agency and the success of the Agency will largely depend on the way this function is performed.
- It is necessary to train the employees to perform this activity, and after the employees are trained, it is necessary to start performing all the activities listed above.

3. ICT is a function that ensures speed, effectiveness, efficiency, transparency, evidence and reliability in operations.

Activities:

- Development and maintenance of specific software for the needs of the Agency,
- Development, maintenance and regular updating of the Agency's website for reporting and transparency purposes,
- Maintenance of regular operation of the computer network and all related equipment in the Agency (printing, scanning, telephony, electronic communication).

This activity is completely neglected and there is no employee in the Agency with the necessary qualifications to perform this activity. This is a big problem for the Agency because it cannot perform its basic functions. The Agency does not have an electronic system for monitoring cases following complaints, nor a system for distributing cases by officials authorized to conduct administrative proceedings. With the absence of such an employee and software solutions, efficient analytics within the Agency, which is necessary for proper strategic planning, is also impossible.

Recommendations for the promotion of the ICT function:

Immediate employment of the necessary qualified ICT staff, development of software (programs) to support the operation of the Agency, training of employees to use the programs, support of interested parties in the use of electronic tools.

4. Financial management, budgeting, and reporting is an important function in the Agency that enables the execution of all financial obligations of the Agency.

Activities:

- Planning of financial resources for the operation of the Agency;
- Public procurement planning;
- Submission of budget requests to the Ministry of Finance;
- Salary calculation;
- Control of spending of funds;
- Keeping accounting records;
- Creation of a completed account;
- Preparation of final annual reports on the Agency's financial operations.

This activity in the Agency is carried out partly with internal, and partly with external capacities. Najmena is an accounting firm that performs accounting work for the Agency.

The shortcoming is that the Annual Plans are not supported by detailed financial plans, and as financial reports for the Agency's operations, the final accounts are attached without sufficient analyzes and explanations for which activities the funds were used. It is not clear if and how the finances are controlled in the Agency. So far, it has not been observed that multi-year financial planning is carried out.

Recommendations for the improvement of financial management in the Agency:

Completing a financial service for complete execution of all activities related to financial planning, budgeting, accounting, financial reporting, and control. As with other services, continuous training of employees in financial management, and budgeting is needed here, and the practice of implementing various projects indicates the need for training in project finance.

5. Technical support is an important logistical function that ensures the smooth operation of other functions in the Agency.

Activities:

- Maintenance of the equipment and premises in the Agency
- Maintenance of hygiene in the Agency
- Securing the Agency's people, documents, and property
- Archive – reception, and forwarding of mail, documents, records, and storage of documents
- Transportation of employees for official purposes with an official vehicle

Recommendations for improving technical support in the Agency:

The mentioned functions are performed partially, it is especially necessary to pay attention to the archive and to improve the operation of the archive, in the direction of its modernization, computerization, as well as the delivery service. It is necessary to introduce electronic archive, storage of objects, electronic delivery, and use of digital signature to enable electronic communication.

5.8. Analysis of processes and procedures for work in the Agency

There are no formal and written work procedures in the Agency. Previously, within the framework of the Commission, there were attempts to introduce ISO standards, but they were not implemented to the end. This is a shortcoming that should be immediately removed and all necessary procedures should be developed.

Operating according to clearly established procedures is of vital importance to the Agency in order to ensure compliance with SIGMA's principles of good governance.¹⁵ such as transparency, accountability, effectiveness, and efficiency in providing services, human resources management, and financial management.

The procedures ensure uniform access and processing of complaints, violations, trainings, promotion of the concept of free access to information, and cooperation with other institutions, non-governmental sectors, and international institutions. The procedures ensure increased reliability in document storage, easier retrieval, and security of the ICT system in the Agency.

Recommendation:

- It is necessary to immediately define the procedures for all the processes that are carried out in the Agency, to indicate the responsible persons, to determine deadlines for acting on individual actions, and to define a way of control and reporting. The procedures, together with the scope of work, are the basis for defining the number and profile of the necessary staff to work in the Agency.

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5.8. Scope of work of the Agency by type of activities

Until now, the Commission has kept records of the volume of work and by analyzing the annual reports of the Commission, the statistics for the last 5 years have been simplified and are shown in the table below:

¹⁵ SIGMA (Support for Improvement in Governance and Management) is a joint initiative of [OECD](#) and on [European Union](#)

Table no. 16 - Data from the Commission's annual reports

	2019	2018	2017	2016	2015
Received complaints	755	622	758	619	960
Silence of the administration	677	366	569	411	874
Management's silence (%)	90%	59%	75%	66%	91%
Other types of complaints	78	256	189	208	86
Solved subjects	471	142	772	616	935
Transferred to next year	741	480	14	28	25
Complaints to the Agency	29	5	22	12	77
Information Holders	1.257	1.256	1.256	1.259	1.278
Submitted reports	1.047	963	1.197	1.250	898
Delivery of reports in %	83%	77%	95%	99%	70%
Total requests received	8.752	9.423	9.905	7.365	4.902
Positively answered requests	8.299	9.115	9.307	7.073	4.557
Monitoring of web sites	121	950			

5.10. Measurement and analysis results

Statistics indicate that the number of complaints received varies from year to year, but that the highest number of complaints refers to the silence of the administration, from 59% in 2018 to a high of 91% in 2015. It is interesting that the percentage of participation in the "Silence of the administration" category in 2015 and 2019 is very close (over 90%), which may mean that the measures taken by the Commission were not effective and that the turbulence that occurred in the Commission in 2018 and the small number of resolved cases (only 142), caused the holders of information to feel relaxed that they should not respond to requests. The movement of the number of received and resolved appeals is presented graphically below.

Figure no. 11 - Ratio of received and resolved appeals in the Commission



The new Law on Free Access to Public Information, which introduces misdemeanor penalties against the holders of information, should introduce greater order and regular response to the requests of information requesters. It is realistic to expect that the number of complaints received will decrease to a large extent, which will also decrease the scope of the Agency's work in this area. On the other hand, it is expected to submit a certain number of cases under the jurisdiction of the Offenses Commission, which was recently established and started its work.

Taking into account that the action contrary to the Law will be punished financially, we do not expect a large number of misdemeanor charges, but that the holders of the information will be disciplined and act in accordance with the provisions of the Law, which is the reason for the introduction of misdemeanor provisions. However, the number of executors must be optimized and their placement justified.

As already mentioned, from the total number of appeal cases, the largest number is the "Silence of the administration" cases, as shown graphically below.

Figure no. 12 - The administration's silence in the total number of received appeals

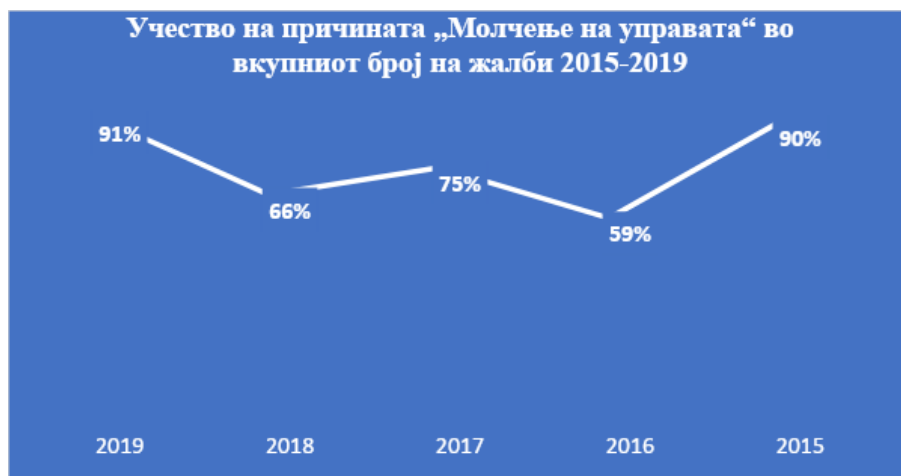


Figure no. 13 - A total number of received requests from information holders



It is also interesting to look at the volume of information requests from requesters to information holders by year. Significant growth in requests was noted until 2017 when interest in publicly available information began to decline.

In the direction of the analysis of compliance with the obligation of the information holders to submit regular annual reports on the requested information, this obligation is largely respected. In the base year 2015, we had a very low reporting rate from information holders, which increased dramatically (to almost 100%) in 2016 for unknown reasons. Then follows a repeated decline in compliance with the form for submitting annual reports to the Commission, so that in 2019 this percentage is 83%. Considering that this is a legal obligation of the holders of information, this is not a very high percentage, and it is expected that this percentage will be drastically increased with the introduction of sanctions. The previous reports did not analyze the reasons for this percentage movement.

Figure no. 14 - Delivery of the reports from the information holders to the Agency



6. Working conditions of the Agency, technical resources, and information technologies

6.1. Analysis of the adequacy of the Agency's spatial conditions

The agency uses office space within the MRTV building with a total area of 565 m² located on the 14th floor. The space is divided into 10 offices and one room for meetings, trainings, and other events. According to the statements of the employees, the space is equipped with necessary but old furniture and equipment that should be renovated and modernized according to the needs of the Agency. By the Decision of the Government, the space has been given to the Commission for permanent use without compensation.

The location of the Agency is in an office building, with provided supervision and guard service, close to the courts. Regarding the accessibility, the location is not favorable (14th floor, few elevators).

The employees indicated that there was a problem with hygiene. As this activity is outsourced to an external firm, the management should react and ask the contractor to fulfill the obligation according to hygiene standards.

The agency owns two vehicles that are not in driving condition due to their age.

Recommendations for improving the spatial conditions of the Agency:

- At this moment, the spatial conditions do not meet the work needs of the Agency, because renovation, restoration of furniture, etc. is needed.
- For the needs of the Agency, it is possible to ask the Government to provide a suitable office space, as well as a suitable vehicle that would be used for the Agency's activities.

6.2. ICT as a key factor for efficient operation of the Agency

According to the data from the inventory of the property from 2019, the Agency has 36 desktop computers and 8 laptop computers. Of the listed 10 desktop computers were purchased or donated in 2019, while the others are older (4 purchased in 2015 and 4 purchased in 2016). The remaining 18 are of older date and obsolete. Laptops were purchased / donated 5 in 2019 and 5 before 2015 and they are already obsolete.

Stationary training equipment: laptop and projector.

All employees have computers that are connected to the server where the documents are stored.

The situation in the Agency with ICT expertise is critical. The Agency does not have an employee qualified for the development, monitoring, maintenance and protection of the network, hardware and software, as well as the data located in the Agency's server. This activity is performed by an external person hired by the Agency. This kind of engagement is not enough and, what is especially important, does not ensure the security of the system.

The Agency does not have the appropriate software/program for recording the documents that enter the Agency on any basis and the reception in the archive is done manually. There is no program for monitoring the cases, which will further emphasize the problem with the start of the work of the Commission for Offenses and the reception of new cases. The lack of an appropriate program for records, monitoring and statistical analysis of the cases in the Agency slows down the work a lot and leaves the possibility of inaccurate data, as well as a small range of possible reports that would be used by the Agency and external interested parties.

Reports from information holders are received at an electronic address and it is necessary to manually review and prepare them. This greatly slows down the process and leaves the risk of incorrect data.

Recommendations:

- It is necessary to urgently staff the ICT function in the Agency with professional staff, as well as **to have software** for admission, records, distribution of cases, monitoring and analysis of the number of cases by type, duration of the procedure, number of completed cases per employee, statistical analyses integrated.
- The software should be able to track the information holders as well. The agency should provide unified record-keeping among the information holders for easy monitoring, storage, grouping, and analysis. It is necessary for the software to be installed and for all holders to have access through a website with a special login module, where they will upload the information and reports in a precisely determined format and at a precisely determined time, by periods. This will

enable a quick and reliable process of collecting the reports and compiling them into an overall status report. The software can also be used as a platform for sending mail - sending a request to the holder of information against whom the complaint is filed in order to pronounce and deliver all documents related to the case. For greater use of the Internet for sending documents, it is necessary to provide a digital signature that would have the force of proof of the sent mail.

- Recording programs should be made in the financial section, in the training section, and for recording contacts with the holders of information.
- The employees will have to be trained in the use of the software, to define the procedure for use and for the preparation and use of the reports.

7. Agency's finances

7.1. Method of carrying out the financial plan of the Agency

From the inspection of the documents and according to the answers to the questions in the employee survey, it can be concluded that no special procedure is applied for the preparation of a financial plan and that when preparing a Budget request, only the guidelines given in the Budget Circular are followed, without addressing the needs of the Commission according to the goals defined in the SP and the annual program.

7.2. Establishment of internal control of the Agency's finances

From the answers of the employees, as well as from the inspection of the available documents, it was established that there is no established internal control in the Commission, both for financial operations and for compliance with laws and regulations.

In 2017, the State Audit Office audited the operation of the Commission for 2016 and identified irregularities related to the lack of established internal control, illegal operation in the area of payment of compensation to the members of the Commission and irregularities in the part of treasury operations. It is not known whether the indicated irregularities have been removed, but according to the available documents, no such adjustment has been made.

Recommendations for improving the internal control system:

- The need for improved financial management in the Agency is evident, and for this purpose, it would be good to improve the financial operation and management through additional equipment, financial management training and the development of work procedures. It is expected that the Agency will participate in projects in the future and for those needs it is good to train the project finance staff.

- Bearing in mind that the transformation of the Commission into an Agency has been carried out and significant changes have been made in the functioning of the Agency, it is recommended to pay particular attention to the indicated irregularities from the audit report and structuring of the internal control system according to the laws.

7.3. Analysis of the use of the Agency's budget by year

The table below presents the amounts of the Commission's budgets in the period 2015-2019. A comparison was made between the approved budget and the actual funds spent according to the final account of the Agency.

An analysis of the individual participation of the items in the total sum of expenses was also made in order to determine the most significant items in the section of expenses.

In order to determine the quality of financial planning, a comparison of the budget with actual expenses was made, and a dynamic comparison of the amounts of budgets and expenses by year was also made. The utilization of the budget is an indicator of the coordinated planning of activities and resources.

Financial planning is a way of determining the organization's needs for financial resources that they will need in the future. The finances of the organization are planned according to the set goals, costs, and activities for achieving the goals, but they also serve to evaluate the results and their economic efficiency.

The budget is the link that connects the goals and means of the Agency. Budget planning and financial planning are activities that require serious engagement by the top management of the Agency. This is especially important in conditions when the Agency implements projects and where part of the funds used by the Agency come from sources of international institutions that in themselves have special requirements for financial reporting.

The analysis of the utilization of the budget from previous periods should be the basis for planning for the next fiscal period. Monitoring the implementation of the budget is important in order to avoid the dangers of inappropriate spending of the budget, but also from the aspect of possible reallocation of surplus funds that will not be spent in the budget period.

Ставки	2019			2018			2017			2016			2015	
	Буџет	Завршна сметка	% учество	Буџет	Завршна сметка	% учество	Буџет	Завршна сметка	% учество	Буџет	Завршна сметка	% учество	Буџет	Завршна сметка
Основни плати	8.833.000	7.538.448	61%	9.782.000	8.061.030	63%	9.000.000	8.017.464	61%	8.973.000	8.053.828	57%	8.162.000	7.859.079
Придонеси	3.267.000	2.852.932	23%	3.618.000	2.984.976	23%	3.300.000	2.975.858	23%	3.313.000	2.977.844	21%	3.020.000	2.906.781
Патни и дневни расходи	200.000	0	0%	100.000	24.911	0%	100.000	83.008	1%	100.000	53.440	0%	100.000	5.000
Комунални услуги, комуникација	1.698.000	1.199.985	10%	1.800.000	1.141.600	9%	1.667.500	1.377.027	10%	1.523.461	1.517.551	11%	2.974.000	1.459.134
Материјали и ситен инвентар	100.000	87.206	1%	100.000	69.798	1%	100.000	99.442	1%	120.000	119.980	1%	120.000	109.126
Поправки и тековно одржување	400.000	399.708	3%	200.000	182.572	1%	200.000	156.964	1%	200.000	191.959	1%	200.000	199.381
Договорни услуги	395.000	94.277	1%	560.000	285.408	2%	300.000	299.680	2%	260.000	256.467	2%	260.000	163.090
Други тековни расходи	70.000	21.316	0%	70.000	21.559	0%	70.000	59.273	0%	100.000	73.674	1%	100.000	60.214
Разни трансфери	50.000	50.000	0%	50.000	15.000	0%	0	0	0%	595.000	0	0%	0	0
Исплата по извршни исправи	67.000	66.442	1%	0	0	0%	0	0	0%	855.539	855.539	6%	0	0
Купување на опрема и машини	100.000	48.864	0%	100.000	21.651	0%	82.500	79.899	1%	66.000	64.815	0%	66.000	65.998
Градежни објекти	100.000	0	0%	100.000	0	0%	0	0	0%	0	0	0%	0	0
Вкупно	15.280.000	12.359.178	100%	16.480.000	12.808.505	100%	14.820.000	13.148.615	100%	16.106.000	14.165.097	100%	15.002.000	12.827.803

Table no. 17 - Comparison of approved budgets and final accounts of the Commission 2015-2019

From the table, it can be determined that the largest part of the Commission's expenses in the period 2015-2019 refers to salary expenses, which amount to an average of 83% of the total expenses. The second largest expenditure refers to utility costs, and they are, on average about 10%. In total, the two largest expenditures occupy 93% of the Agency's total budget, so that there are not many funds left for the other uses and activities of the Agency.

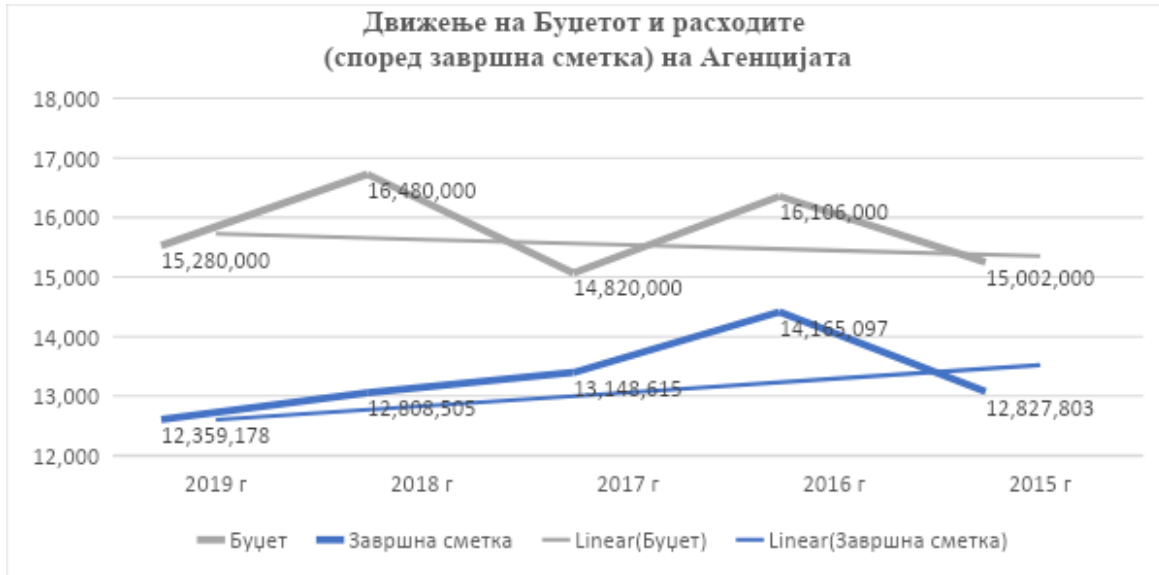
From the table below on the utilization of the budget, it can be seen that the utilization of the budget is on average around 84%. This indicates inadequate planning and management of funds, especially in the part of salaries, where the budget approved funds for salaries, but the Commission did not optimally use the funds for hiring staff. The other competent activities of the Commission were not adequately financed and this is one of the reasons for weaker results in terms of promotional, control, educational activities, as well as international activities.

Figure no. 15 - Utilization of the Commission's budget



In the past years, there has been a weak growth trend of the Commission's budget, but also a deplorable trend of the used budgets during the last 5 years. This is an indicator that indicates that financial planning should be improved in the future.

Figure no. 16 - Movement of budgets and expenses of the Commission 2015-2019



The budget of the Agency, after the transformation, for 2020 is greater than the budget for 2019 by 2.5 million denars and retains the structure of the previous years. A greater change is noted in the contractual services section, which refers (as announced) to the procurement of services for the introduction of ISO 9001, which will introduce operating procedures.

The increase in the Agency's budget in the part of salaries is significant, from 10,391,380 denars spent during 2019 for gross salaries, 14,000,000 denars are planned in the budget for 2020, which is an increase of about 3,600,000 denars which could be used to fill the key jobs that are missing in the Agency, as well as for the promotion of the Agency's employees.

Table no. 18 - Budget of the Agency for 2020

Bets	Budget	% participation
Basic salary	10.220.000	59,8%
Contributions	3.780.000	22,1%
Travel and daily expenses	100.000	0,6%
Utilities, communication and transportation	1.800.000	10,5%
Materials and small inventory	100.000	0,6%
Repairs and ongoing maintenance	200.000	1,2%
Contract services	560.000	3,3%
Other current expenses	70.000	0,4%
Various transfers	50.000	0,3%
Payment by executive documents	0	0,0%
Purchase of equipment and machinery	100.000	0,6%
Construction buildings	100.000	0,6%
In total	17.080.000	100,0%

7.4. Projections for the Agency's required budget

During the previous operation, the Commission did not prepare a three-year/multi-year Budget and did not perform a longer-term projection of the necessary financial resources in order to achieve the long-term goals.

Short-term planning - one year, can be the cause of financial instability, the impossibility of planning multi-year activities, and indicates a lack of clear long-term goals. Every organization should have a long-term work plan, presented in the form of a strategic plan, which will express long-term priorities, measurable goals to be achieved over the years, and necessary resources to achieve the goals. For those reasons, it is also necessary that the organization's budget be projected for the period of validity of the plan. At the end of each year, an analysis should be performed as to whether the goals for the year have been met, to what extent, and whether they are achieved with the dynamics of achieving the indicators planned according to the strategic plan. In parallel with the assessment of the achievement of the goals, an analysis of

the spent funds is also performed, whether they were used in the direction of achieving the goals, and whether there is a need to change the financial plan for the next period. Each subsequent financial plan should be based on a detailed analysis of the previous plan, and not only a financial analysis but also an analysis of the achievement of goals.

Our Budget Law stipulates that every organization prepares a three-year budget every year, in which the previous plan will be checked, and corrections will be made according to the new circumstances. With the Budget request, a strategic plan must also be submitted, i.e. a program for the year aligned according to the strategic plan.

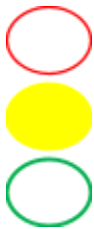
Recommendations:

- The agency should establish a practice for long-term planning of goals, and activities and an appropriate financial plan and budget that will correspond to the planned activities. For this purpose, it is necessary to carry out training of the persons who will participate in this process, both in the part of the preparation and in the part of the implementation. and performance monitoring.

V. CONCLUSIONS AND RECOMMENDATIONS

According to the criteria specified in the Methodology, which served as a starting point for performing the functional analysis, several conclusions and recommendations are reached.

1. Strategic determinations of the Agency for the protection of the right to free access to public information



AFAPI actually started working from December 2019 and does not have its own SP, but previously the Commission had developed SP for the period 2018-2020.

From the analysis of all the acts and actions of AFAPI, it can be concluded that the focus of the Agency's work consists in conducting administrative procedures and deciding on citizens' complaints against the decisions of the information holders denying the right to free access to public information.

The most important part, on the other hand, of the SP of the Commission refers to the definition of long-term goals:

- Raising public awareness of the right to free access to public information;
- Improvement of the legal framework for free access to public information
- Improvement of the internal organization and systematization of jobs, human resources, spatial and technical working conditions;
- Cooperation and exchange of experiences with domestic and international partners and experts.

The strategic plan does not have clearly defined indicators at the level of goals, i.e. how to measure the achievement of goals in the long term, as well as basic data through which progress and achievement of goals could be measured. In addition, the Strategic Plan and the Action Plan do not indicate the necessary budget for achieving the goals, as a basic prerequisite for implementing the activities and achieving the goals. Annual programs are not linked to plans, which leads to the conclusion that SP is not used for short-term planning. The answers after the implementation survey of the employees speak of their lack of familiarity with the process of strategic planning, ignorance of the competences for implementation and monitoring of strategic planning, from which it can be concluded that there is no system for implementing and monitoring the Strategic Plan, a system for its

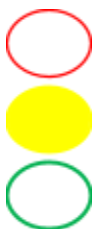
revision and creating a general dilemma regarding whether and to what extent the goals defined in it have been achieved. A monitoring framework for the objectives is not offered in the Plan. In the past three-year period, the Commission did not monitor and measure the achievement of long-term or even the annual goals set by the annual program. From the aforementioned, it can be concluded that the SP was prepared more as a formal document and that its practical use cannot be recognized.

One of the Agency's priorities should be the development of a quality Strategic Plan that will serve as the direction of the Agency's development and the way to accomplish the mission and the reason for the Agency's existence, as well as the basis for the development of the Agency's annual programs and budgets.

It is necessary to form a team that will evaluate the previous strategy and, based on the findings, will create a new SP for the next period in which the shortcomings of the previous one will be removed.

Each annual report on the work of AFAPI should also contain information on the implementation of the SP and the degree of achievement of the goals. Part of the Agency's employees should be specially trained for strategic planning and preparation of annual programs with clearly defined goals, indicators, budgeting, and financial planning.

2. Organizational capacities of the Agency for the Protection of the Right to Free Access to Public Information



The location of the Agency is in an office building, with provided supervision and guard service, close to the courts. It is located on the 14th floor with an insufficient number of elevators. Moreover, the Agency has two vehicles that are not in driving condition.

Observed challenges for which solutions must be developed:

- Inaccessibility for persons with disabilities and mobility difficulties, disabled persons, and visually impaired persons – increased and improved electronic communication with parties to overcome the need for their physical presence and construction of an accessible ramp at the entrance and establishing rules of priority in the movement with elevators of these categories of persons.

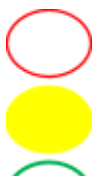
- Non-existence of official vehicles for the needs of AFAPI - assignment of a vehicle by the Government or approval of budget funds for its purchase.

An unequivocal conclusion about the state of the technical means for the work of AFAPI, primarily in terms of software solutions and IC technology, is that it is unsatisfactory and represents a serious challenge, even a problem, for the proper, efficient, and smooth operation of AFAPI.

The following shortcomings in the present IT infrastructure and personnel must be urgently addressed:

- To staff the ICT function in the Agency with professional staff.
- To develop software for reception, records, distribution of cases, monitoring and analysis of the number of cases by type, duration of the procedure, number of cases processed per employee, and statistical analyses.
- The software should be able to track the information holders uniformly.
- The software should be placed on the Agency's server, and all holders should have access with a special login (code) to their profile, where they will upload the information and reports in a precisely determined format and at a precisely determined time, by periods.
- The software should also be used as a platform for sending mail, that is, sending a request to the holder of information against whom the complaint has been filed, to pronounce and deliver all the documents related to the subject - interoperability between the Agency and the information holders.

3. Internal relations and communication

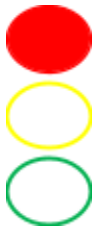


This criterion, as a starting point for the functional analysis, does not fully satisfy the necessary standards, but it still has certain positive elements. The following can be highlighted as shortcomings that need to be overcome:

- Absence of internal procedures for disciplinary responsibility of administrative officials;
- Absence of internal procedures for individual remuneration of administrative officers;
- Existence of a risk of subjectivity and personal influences during the distribution of the cases upon appeal due to the absence of an automated distribution system;
- Completely different professional background of the employees of AFAPI which does not fully correspond to the needs of the Agency.
- The missing internal procedures should create a practice of initiating disciplinary responsibility for employees only when it is really necessary, based on objective criteria. The same applies to the reward of officials, which does not have to be expressed only through a monetary award (choice of the best official of the month, of the year, the greatest contribution to the Agency, etc.).
- A correct hierarchical arrangement among employees in a public body such as AFAPI can exist under the assumption that a suitable general secretary responsible for the entire civil service system has been elected, further, difficulties in the work process of the civil servants always create improper systematization of jobs with a significant absence of necessary staff, because of which, most of the time, in practice, the same officials perform duties that are intended for several positions, but they are vacant, that is, they are not filled, so the officials are forced to perform tasks that are outside their scope.
- Personnel who do not have a fixed employment relationship but are temporarily contracted (and whose performance is extremely important for the functioning of AFAPI) and who cannot be brought under the rules of the Law on Administrative Officers.
- Interpersonal relations in AFAPI are mostly informal, friendly, and personal. Such a relationship can have a double effect: the feeling of immediacy and closeness gives rise to togetherness and loyalty to the institution, but at the same time, it can lead to the separation of smaller groups, a feeling of non-belonging and

inferiority among some of the management or employees. Hence, frequent informal conversations, gatherings, and meetings are desirable. At the same time, it is necessary to establish and apply the prescribed rules of hierarchical superiority and subordination because only in this way can one expect to easily locate the responsibility of each employee in case of errors or irregularities in the work, as well as equality in the approach to each employee according to their title and position.

4. Internal organization and human resources



Regarding the internal organization and human resources, there are several conclusions:

- At the moment, out of 29 jobs provided in the Rules for Systematization of Jobs of AFAPI, only 18 or 62% of them have been filled. This is a devastating fact as far as the human resources situation or staffing of AFAPI is concerned.
- The internal organization of AFAPI, which directly reflects on the efficiency of the staff's work, is inadequate with its legal competencies and non-functional. The basic profile of personnel necessary for the smooth and efficient functioning of the Agency are persons with higher legal education, experts in the field of administrative law, and precisely such personnel are lacking in the institution.
- Despite all the trends for the digitalization of administrative work and administrative procedures, not a single IT engineer is employed in AFAPI.
- For a long period of time, the office staff has not been promoted even though the legal conditions for advancement have been met.
- The basic recommendation for this criterion from the functional analysis carried out is the immediate change of the acts for systematization and internal organization and the gradual (phased) filling of all the planned jobs by animating and getting to know all the arguments of the Assembly and the Government of the Republic of North Macedonia and all the professional and even general public about the current situation.

- In the narrative part of the functional analysis, a specific proposal for the new internal organization of AFAPI is given.

General Secretary

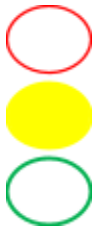
Department of Financial Affairs

- o **Department for Administrative-Legal and General Affairs**
- o **Department for Administrative Procedures, and**
- o **Department of Legal and General Affairs**

Department for Cooperation, Transparency and Education

- o **Public Relations, Transparency, and Education Sector**
- o **Cooperation, ICT, and Analysis Sector**
- o **International Cooperation and Projects Sector**

5. Efficiency



Analysis of the efficiency of the work of AFAPI was carried out in accordance with the generally accepted indicators for measuring the efficiency of institutions that implement administrative or judicial procedures, which were established by SEREJ. It is important to note that this analysis does not include measuring the efficiency of AFAPI in the part of its competences that do not refer to bringing concrete solutions to complaints, such as its competence to conduct trainings, monitor situations, give opinions on laws, prepare of programs, international cooperation, etc.

Therefore, it is necessary to emphasize that even without carrying out specific measurements AFAPI (previously the Commission) had a certain level of international cooperation and considering the long-term work from its foundation until today, regardless of the periods of ups and downs of its operation, there are foundations for realistic expectations that the trainings that AFAPI will carry out will be timely and of high quality and will contribute to the development of the institutions' awareness of the importance of transparency in their

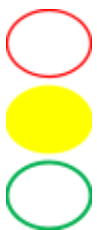
operations. The enthusiasm and undoubted will achieve results in management, as well as the degree of independence shown in the analysis, also go in the direction of raised expectations for work efficiency.

On the other hand, the situation regarding the low rate of efficiency in the conduct of proceedings in 2018 and 2019 (in contrast to 2017, when it recorded exceptional efficiency in terms of the number of resolved appeal cases and the average time to resolve an appeal case of only 6.6 days) are it is due to objective circumstances, primarily discontinuity in the work of the Commission and the current Agency, as well as lack of personnel; the poor organizational setup that results in the inadequate and outdated systematization of jobs.

Recommendations for increasing efficiency:

- Employment of professional staff (lawyers, PR, and IT) in accordance with the new acts for systematization and organization of work;
- New technical conditions (software);
- Preparation of realistic annual training plans for information holders;
- Preparation of training curricula and raising awareness of the need for publicity in the operation of the public sector, and
- Budget funds increase.

6. Transparency



AFAPI does not have a separate organizational unit for public relations, it does not have a spokesperson or a person who would deal with relations with the general public with the necessary educational, professional, and professional qualifications. This represents a handicap for AFAPI's professional communication with the public, which is necessary for its efficient operation and for strengthening the trust of citizens in this institution and in general for strengthening their trust in all public bodies. Communicating with all external entities, answering questions from the public, and responding to possible criticisms of the work of AFAPI are done without previously established rules or an adopted plan and are ad hoc.

A specialized person who would deal with determining what information and when will be published on the website, as well as rules

about what its design will be, who will give an order for what to publish that person, etc., do not exist. Also, materials that would serve to raise the awareness of citizens about the ways of public and transparent operation of institutions, such as brochures, videos with appropriate content, translations of annual reports in English and Albanian, etc., are not provided and are not used.

Finally, the distribution of cases is not transparent enough and can hardly be controlled. If it were automated, then the risks of subjectivism would not exist, and the control of its implementation would be simple and easily feasible.

Regarding the publication of the information in accordance with the LFAPI, the Agency generally satisfies the legal obligations, with the exception of certain information that is published but inappropriately, that is, access to it is difficult. Also, a detailed description of the statistical data as a narrative, published in the annual report on the work of the Agency, is missing. This deficiency could be easily overcome by using modern software and hiring people who know how to manage, upgrade and improve them.

In particular, it is necessary to take the following measures to improve transparency:

- Employment of a public relations expert;
- Preparation of annual programs and plans for AFAPI public appearance: trainings, video clips, brochures, visits to educational institutions, continuous addressing of AFAPI representatives to the public through interviews, press conferences, public announcements, etc.
- Publication of AFAPI decisions made in administrative procedures (anonymized);
- Publication of the decisions of the misdemeanor commission within the AFAPI (anonymized);
- AFAPI's new website and AFAPI's new domain, which will contain its correct name and the abandonment of the Commission's predecessor whose existence preceded AFAPI;
- Regular and continuous communication of AFAPI with the Assembly and the Government in order to inform them about the problems that it notes with certain holders of information, as well as about its achievements and progress

CONTRIBUTIONS:

- Decision on the formation of a committee to undertake activities for the preparation of a functional analysis in the Agency for the Protection of the Right to Free Access to Public Information, number 01-165/1 dated 03.10.2020;
- Decision to supplement the Decision on the establishment of a commission to undertake activities for the preparation of a functional analysis in the Agency for the Protection of the Right to Free Access to Public Information, number 01-165/2 dated 03/19/2020;
- Questionnaire;
- Proposal to change the Regulation on the internal organization of the Agency for the protection of the right to free access to public information (organogram);
- Proposal for systematized jobs within the Agency for the Protection of the Right to Free Access to Public Information.

Agency for Protection of the Right to Free Access to Public Information

**Director,
Plamenka Bojcheva**

- ДИРЕКТОР
- ЗАМЕНИК ДИРЕКТОР
 - ГЕНЕРАЛЕН СЕКРЕТАР
 - ОДДЕЛЕНИЕ ЗА ФИНАНСИСКИ ПРАШАЊА
 - ОДДЕЛЕНИЕ ЗА ИКТ - информатички и комуникациски технологии
 - СЕКТОР ЗА УПРАВНО-ПРАВНИ И ОПШТИ РАБОТИ
 - ОДДЕЛЕНИЕ ЗА УПРАВНИ ПОСТАПКИ
 - ОДДЕЛЕНИЕ ЗА ПРАВНИ И ОПШТИ РАБОТИ
- ДРЖАВЕН СОВЕТНИК
- СЕКТОР ЗА СОРАБОТКА, ТРАНСПАРЕНТНОСТ И ЕДУКАЦИЈА
 - ОДДЕЛЕНИЕ ЗА ОДНОСИ СО ЈАВНОСТ, ТРАНСПАРЕНТНОСТ И ЕДУКАЦИЈА
 - ОДДЕЛЕНИЕ ЗА СОРАБОТКА И АНАЛИЗИ
 - ОДДЕЛЕНИЕ ЗА МЕЃУНАРОДНА СОРАБОТКА И ПРОЕКТИ

Sector / Department		Job title	Number of systematized executors
	1.	General Secretary	1
	2.	State consular for cooperation with the holders of information, international cooperation and projects	2
Department of Financial Affairs	3.	Head of the Financial Affairs Department	1
	4.	Advisor for budget control	1
	5.	Junior associate for budget planning and monitoring	1
	6.	Independent clerk-Accountant	1
	7.	Junior officer for material financial operations	1
Department of ICT - information and communication technologies	8.	Head of the ICT Department - information and communication technologies	1
	9.	ICT Advisor	1
	10.	junior collaborator to update the database	1
	11.	Independent technical support officer	1
Department for administrative-legal and general affairs	12.	Head of the Department for Administrative-Legal and General Affairs	1
	13.	Assistant head of the Department for Administrative-Legal and General Affairs	1
Department for Administrative Procedures	14.	Head of the Administrative Procedures Department	1

	15.	Advisor for implementation of administrative procedures	3
	16.	Junior Complaint Handling Associate	4
	17.	Junior associate for administrative affairs of the misdemeanor commission	1
Department of Legal and General Affairs	18.	Head of the Department for Legal and General Affairs	1
	19.	HR Advisor	1
	20.	Legal and General Affairs Associate	1
	21.	Independent clerk - archivist	2
	22.	Junior Officer	1
	23.	Junior Officer-Technical Secretary	1
	24.	Driver	1
	25.	Hygienist	1
Department for cooperation, transparency and education	26.	Head of the Department for Cooperation, Transparency and Education	1
	27.	Assistant head of the Department for cooperation, transparency and education	1
Department of Public Relations, Transparency and Education	28.	Head of Department for public relations, transparency and education	1
	29.	Public Relations Advisor - PR	1
	30.	Translation consultant	2

	31.	Junior Associate Translator	1
	32.	Junior Education Associate	1
Department of cooperation and analysis	33.	Head of Department for collaboration and analyses	1
	34.	Analysis Advisor	1
	35.	Junior Associate for Collaboration with Information Holders	2
	36.	Independent Administrative Support Officer	1
Department for International Cooperation and Projects	37.	Head of Department for international cooperation and projects	1
	38.	Advisor for international cooperation	1
	39.	Junior Project Work Associate	1
	40.	Senior officer for administrative and professional affairs	1
Total: 49			