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INTERNATIONAL-LEGAL REGULATION OF FIGHTING CRIMES IN THE FIELD OF PUBLIC PROCUREMENT AND THE EXPERIENCE OF FOREIGN COUNTRIES

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Abstract: the article describes the international legal regulation of combating crimes in the field of public procurement and the experience of foreign countries. Also, cases of violations of the law in the process of public procurement, legal mechanisms of responsibility for them were discussed, and a norm defining criminal responsibility for intentionally violating the procedure of public procurement was developed.

Keywords: public procurement, corruption, criminal liability, criminal case, fight against crimes, pre-trial investigation, preliminary investigation, investigative actions.

Crimes in the field of public procurement have existed for a long time, and issues of criminal responsibility to fight against them are gradually developing.

In improving the legislation in the field of public procurement in Uzbekistan, the positive experiences of foreign countries and in practice in the field play a special role.

According to "Transparency International", this situation has been identified as a major problem due to the high incidence of corruption in public procurement in EU member states and around the world. In order to prevent corruption in society, it is necessary to ensure that public procurement is reliable, transparent, accountable and open to the public¹.

According to experts, public purchases of many countries make up 15-30% of the gross domestic product, and 10-25% of the contract value is spent on corruption cases due to artificially inflated prices in public contracts. This leads to the embezzlement of billions of US dollars in public procurement².

Since it is difficult to investigate corruption crimes related to public procurement, its amount can only be estimated roughly. 1 trillion annually as a result of corruption related to public procurement around the world. The US dollar will be damaged³. In the countries of the Organization for Economic Cooperation and Development (OECD), corruption in public procurement accounts for 15% of GDP⁴.

¹ See: Transparency International's report on Money, Politics, Power: Corruption risks in Europe, Regional Policy Paper #1, Increasing integrity and EU citizen's trust in public procurement (2012), p. 1

² See: This publication was produced by the United Nations Office on Drugs and Crime (UNODC) Anti-Corruption and Economic Crime Division. https://www.unodc.org/documents/corruption/Publications/2015/Guidebook_on_anti-corruption_in_public_procurement_-_Russian.pdf

³ See: The Size of Government Procurement Markets, OECD, 2002, Offprint from OECD Journal on Budgeting Vol. 1, No.4, March 2002.

⁴ See, here.

The first steps to combat crimes in the field of public procurement at the international level were taken in the second half of the 20th century. At the initiative of the United Nations (UN), many international documents on fighting corruption have been adopted. The Code of Ethics of Officials¹ (1979) should be noted from the first ones adopted. It is in this normative legal document that the concept of "corruption" was strengthened for the first time. However, "corruption" is defined only as bribery by an official of a relevant body, and the definition of this term is narrow.

Also, the conventions of the Organization of American States, the European Union, the Committee of Ministers of the Council of Europe on Combating Corruption, and the UN Convention against Transnational Organized Crime (2000) are also considered important as a legal foundation for combating corruption and crimes in the field of public procurement. In these conventions, cases of bribery in the field of public procurement, collusion in advance, joining an organized criminal group, committing bribery crimes at the local, domestic, regional and foreign levels are covered in detail. The concepts of "official" and "public official" are also defined.

The international legal system in the field of public procurement and anti-corruption has developed consistently, leading to the adoption of the Convention against Corruption by the UN on October 31, 2003. The Republic of Uzbekistan acceded to this Convention in accordance with the Law No. ORQ-158 of July 7, 2008.

Article 9² of the UN Convention against Corruption outlines the requirements for public procurement and management of public funds. According to it, each participating State shall take the necessary measures to establish appropriate procurement systems, in accordance with the fundamental principles of its legal system, in terms of, among other features, the prevention of corruption, transparency, competition and objective criteria for decision-making, and, where appropriate, in relation to personnel responsible for procurement. regulation of issues, such as the application for declaration of interest in certain public procurements, inspection procedures and professional training requirements. In accordance with the convention, the countries that adopted it undertook to develop a system to combat corruption in all its forms, including corruption in the field of public procurement.

Many countries in the EU criminalize collusion, bribery and competition in the field of public procurement and abuse of authority by public officials.

The USA, Germany, South Korea, and Russia were selected for the research of legislative experiences in combating crimes in the field of public procurement. The development paths of Uzbekistan and these countries, similarities in the mentality of the population, achievements in the field became the basis of our study.

Although the first federal government procurement law in the USA was passed in 1792, the process of active formation of public procurement began in the 20th

¹ Code of ethics of officials (adopted by the UN General Assembly on 17.12.1979) URL: https://www.un.org/ru/documents/decl_conv/conventions/code_of_conduct.shtml.

² UN Convention against Corruption 31.10.2003. <https://lex.uz/ru/docs/1461329>.

century¹. Public procurement in the US economy is called the Federal Contracts System (FCT), and the amount of budget funds managed within the framework of the FShT is 500 billion. is more than US dollars. The state encourages the development of innovation by requiring national companies to comply with predetermined technical parameters and introduce innovations².

In the USA, FCT has been legalized since 1948³. Since 1984, work has been carried out on the basis of the Federal Acquisition Regulations (FAR - Federal Acquisition Regulations). The federal contracting system purchases by the US Department of Defense are governed by a special document entitled "Defense Procurement Rules"⁴.

In addition to the various procurement regulations in the US, criminal laws play an important role as a means of protection. Since employees, officials, sales managers, leaders commit crimes in the procurement sector by disguising their social status, this type of crime is called "white-collar crime" (white-collar crime in English).⁵

In August 1982, the U.S. Attorney General's Office and the Department of Defense established the Procurement Fraud Protection Unit to effectively control law enforcement resources in the prosecution of major procurement fraud (DOD) cases involving the Department of Defense⁶. This section is intended to identify various types of fraud affecting civilian and defense procurement, particularly the quality of procurement and the overvaluation of goods, works and services during the procurement process. US legislation is distinguished by its focus on prevention and timely detection of violations in the field of procurement. For Micol, under the False Claims Act, contractors can be subject to substantial fines and criminal penalties for making false and willful misrepresentations to the government. According to this Law, all suspicious transactions must be analyzed from a civil and criminal point of view⁷. Because the legal system of the United States is formed according to the rules of the Anglo-Saxon legal family, the judicial system plays an important role for crimes in the field of government procurement. If a person is found guilty of collusion in the procurement process, that person may not participate in procurement-related activities for 5 years⁸.

¹ УДК 658.7: 001.12/.18 (574) Мухтар Ернур Сапарулы диссертация: Регулирование логистических процессов в системе государственных закупок Республики Казахстан: проблемы и перспективы <https://www.kaznu.kz/content/files/pages/folder17928/Диссертация%20Мухтар%20Е.С..pdf>.

² Федеральная контрактная система США <http://zakupki-tendery.ru/articles/item/146>.

³ Act on procurement of federal property and services. (электрон манба) <https://disposal.gsa.gov/s/act49>.

⁴ Federal Acquisition Regulation Part 15 - Contracting by Negotiation. <https://www.acquisition.gov/far/part-15>.

⁵ white-collar crime атамасини криминалогияда америкалик профессор Едвин Сатерленд киритган. Ушбу атама юқори ижтимоий мавқега эга бўлган хурматли шахслар томонидан иқтисодий жиноятларни содир этишини билдиради.

⁶ DEFENSE PROCUREMENT FRAUD LAW, [tps://www.justice.gov/sites/default/files/jmd/legacy/2014/05/31/ear-j-99-56-1985.pdf](https://www.justice.gov/sites/default/files/jmd/legacy/2014/05/31/ear-j-99-56-1985.pdf), Craig M. Bradley. Criminal Procedure. A Worldwide Study. Carolina Academic Press, 2007. URL: <http://www.cap-press.com/pdf/1632.pdf>

⁷ False Claims Act (FCA), "Lincoln Law"- [tps://en.wikipedia.org/wiki/False_Claims_Act](https://en.wikipedia.org/wiki/False_Claims_Act).

⁸ Е.В.Тищенко Уголовная ответственность за преступления в сфере государственных и муниципальных закупок: сравнительно-правовой анализ. УДК 343 <http://publishing-vak.ru/file/archive-law-2016-11/9-tishchenko.pdf>.

As can be seen from the above, US criminal law provides strict and effective measures for crimes committed in the field of public procurement.

Since 1970, the European Union has created legislation to ensure that the public procurement market is open and competitive. These rules cover aspects such as procurement notices, procedures for evaluating companies' competences, awarding contracts and remedying violations of procurement laws.

The European Union has a number of procurement directives that change from time to time. Some of them are as follows: Directive 2014/24/EU of the European Parliament and Council of 26.02.2014 on public procurement¹, Directive 2014/23/EU on granting preferences in contracts of 26.02.2014², Energy, transport, postal communication of 26.02.2014, etc. Directive 2014/25/EU on the harmonization of legal documents on procurement by legal entities³. Since Germany is a member of the European Union, it is obliged to comply with the Union's public procurement legislation, so it has improved the German public procurement legislation based on the above directives⁴.

In Germany, which belongs to the Romano-German legal family, the competent body for public procurement is the Federal Audit Chamber, and the improvement of the public procurement system is entrusted to the Federal Ministry of Economy. Domestic producers, small and medium-sized enterprises are supported in order to develop competition in the procurement process in Germany. Also, in Germany, similar to the European Union, open and closed procurement, one- and two-stage tenders, requests for prices from a single source of procurement, request for proposals and competitive negotiations are used. In Germany, public procurement is carried out almost entirely electronically, and the control system is carried out in the form of an independent organization and judicial body. The possibility of judicial review of decisions on the placement of public procurement is one of the successful innovations in this area⁵. It is rare for participants to go beyond the scope of public procurement law, corruption and abuse, and restriction of competition⁶. This shows how the system of public procurement in this country has been put on the right track.

In Germany, independent persons are appointed to place public orders in public organizations and their work is monitored by supervisory bodies and the chamber of accounts⁷.

¹ DIRECTIVE 2014/24/EU OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of 26 February 2014 <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32014L0024>.

² DIRECTIVE 2014/23/EU OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of 26 February 2014 <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32014L0023&rid=2>.

³ Directive No. 2014/25/EU dated 26.02.2014 on the harmonization of legal documents on procurement by legal entities operating in the fields of energy, transport, postal communication, etc.

⁴ Verbesserung von Rechtsrahmen und Steuerungsstrukturen des öffentlichen Auftragswesens in Deutschland <https://www.oecd-ilibrary.org/sites/ef9bec30-de/index.html?itemId=/content/component/ef9bec30-de>

⁵ У.Бурханов. Государственные закупки. <http://el.tfi.uz/pdf/>

⁶ У.Бурханов, Т.Атамуродов Давлат Хариди ўқув қўлланмаси. – Т. 2012. – Б. 92.

⁷ Тищенко Екатерина Владимировна Уголовная ответственность за преступления в сфере государственных и муниципальных закупок: сравнительно-правовой анализ // Вопросы российского и международного права. 2016. Том 6. № 11А. С. 93-107. <http://publishing-vak.ru/file/archive-law-2016-11/9-tishchenko.pdf>.

German public procurement law is governed by a number of laws and regulations, including the Rules on Tenders and Contracts for Construction Works (VOB/A), the Act on the Award of Works and Services (VOL), the Act on Combating Restrictions of Competition (VGV)¹. It should be noted that in German law, administrative fines are more often used, and the weight of criminal sanctions is very small.

Chapter 26, Article 298 of the German Criminal Code provides criminal liability for an agreement restricting competition in the offer of goods, Articles 299, 300 for extorting money in the conclusion of a contract, unlawfully giving advantages to others².

Public procurement in South Korea is regulated by the Laws "On Government Procurement", "On Local Authorities", "On Government Contracts", "On the Construction Industry", "On the Defense Procurement Program" and other legal documents. is placed.

The competent body in the field of public procurement in South Korea is the Public Procurement Service (RRS). This office received the status of a special agency that coordinates all stages of government procurement processes, except procurement for defense needs. Korea Online Electronic Procurement System (KONEPS) has been established since 2002 for all public procurement in South Korea, and this system continuously monitors procurement processes. All public organizations must announce tenders through KONEPS. After the implementation of this system, it significantly increased the transparency of public procurement and significantly eliminated cases of collusion and corruption in the procurement process³. In 2010, a fingerprint identification tender system was developed, and in 2011, systems and applications were developed to manage the tender process through smartphones. The above, in turn, is an incentive to reduce corruption during the implementation of public procurement in Korea and the development of the state economy. In South Korea, Article 315 of the Penal Code criminalizes interference with fair conduct of auctions and sales⁴.

Public procurement in the Russian Federation is governed by the Constitution of the Russian Federation, the Civil Code, the Budget Code, Law No. 44-FZ "On the contractual system of goods, works and services for the provision of state and municipal needs" adopted on April 5, 2013, "Some legal entities of July 18, 2011 by types are regulated by the Law No. 223-ФЗ "On procurement of goods, works, services"⁵ and other normative documents. Pursuant to this Law, there are types of procurement, such as selection, auction, procurement from a single supplier, which

¹ Public procurement – Study on administrative capacity in the EU Germany Country Profile https://ec.europa.eu/regional_policy/sources/policy/how/improving-investment/public-procurement/study/country_profile/de.pdf

² German Criminal Code https://www.gesetze-im-internet.de/englisch_stgb/englisch_stgb.html.

³ PREVENTING CORRUPTIN IN PUBLIC PROCUREMENT <https://www.oecd.org/gov/ethics/Corruption-Public-Procurement-Brochure.pdf>.

⁴ Republic of Korea: Criminal Code (CRIMINAL ACT) https://elaw.klri.re.kr/eng_service/ lawView.do? hseq=28627&lang=ENG.

⁵ Федеральный закон от 18.07.2011 N 223-ФЗ (ред. от 14.07.2022) “О закупках товаров, работ, услуг отдельными видами юридических лиц” <http://pravo.gov.ru/proxy/ips/?docbody=&nd=102149420>.

are carried out in open, electronic and closed form. State procurement is monitored and audited by the Chamber of Accounts. The competent body in the field of public procurement is the Ministry of Finance¹.

In the Russian Federation, the Penal Code for Criminal and Correctional Work, adopted in 1885, played an important role in determining criminal liability for violating the laws on public procurement. Section 6 of this code is entitled "Crimes and offenses of officials in certain service sectors", which includes the use of public office in commercial activities, the participation of officials in public auctions and other transactions, the selection of officials in activities related to the sale of goods and material assets, or the acceptance of completed works. Criminal liability is registered for making, illegally receiving gifts from suppliers of goods, collusion of officials with individual suppliers to make concessions in public sales, violation of general rules of conducting public sales, etc².

In Russia, the norms determining responsibility for crimes in the field of public procurement have been supplemented, and in the current article 200.4 of the CC of the Russian Federation, abuses in the procurement of goods, works, services to meet state or communal needs, in article 200.5, procurement by a contract service employee, contract manager, member of the procurement commission criminal liability for bribery in the process, Article 200.6 for knowingly providing a fraudulent expert opinion in the field of procurement of goods, works, services for state and communal needs, Article 201.1 for abuse of authority in the execution of a state defense order³.

As the legislation of the above countries in the field of public procurement is being improved, it allows to prevent crimes in the field of public procurement and to carry out an effective investigation of identified cases.

We can also cite the following legal documents adopted in our national legislation on combating crimes in the field of public procurement:

- Articles of the Civil Code of the Republic of Uzbekistan (Article 167 "Empropiation or embezzlement", Article 175 "Conclusion of transactions contrary to the interests of the Republic of Uzbekistan", Article 205 "Abuse of power or authority", Article 206 "Deviation from the scope of authority or authority»;

- Law No. ORQ-419 "On Combating Corruption" adopted on January 3, 2017.

Also, the Decree No. PF-6013 of the President of the Republic of Uzbekistan dated June 29, 2020 "On additional measures to improve the anti-corruption system in the Republic of Uzbekistan" was adopted, and in accordance with this Decree, the Anti-Corruption Agency and the National Anti-Corruption Council were established.

¹ Федеральный закон от 05.04.2013 N 44-ФЗ (ред. от 14.07.2022) "О контрактной системе в сфере закупок товаров, работ, услуг для обеспечения государственных и муниципальных нужд" https://legalacts.ru/doc/44_FZ-o-kontraktnoj-sisteme.

² Тищенко Екатерина Владимировна Уголовная ответственность за преступления в сфере государственных и муниципальных закупок: сравнительно-правовой анализ // Вопросы российского и международного права. 2016. Том 6. № 11А. С. 93-107. <http://publishing-vak.ru/file/archive-law-2016-11/9-tishchenko.pdf>.

³ Уголовный кодекс Российской Федерации от 13.06.1996 N 63-ФЗ (ред. от 14.07.2022, с изм. от 18.07.2022) http://www.consultant.ru/document/cons_doc_LAW_10699/d209c846e601b209b0c69e83640ad32304093c78/.

The main tasks of the anti-corruption agency are the use of budget funds¹, debts of international organizations and foreign countries, the analysis of the effectiveness of the anti-corruption control system in the field of public procurement, the implementation of the anti-corruption standard ISO 37001 by the state customer in order to prevent and fight corruption in the field of public procurement. establishment of the requirement, remote monitoring with the General Prosecutor's Office of the Republic of Uzbekistan on a permanent basis in order to identify and prevent the affiliation of the participants in public procurement, including the conflict of interests related to the final beneficiary owners.

However, the reforms carried out to improve the legislation on combating crimes in the field of public procurement are not having a sufficient impact. This, in turn, leads to misappropriation and misappropriation of state funds in the field of public procurement, as well as to wasteful spending.

Account Chamber of the Republic of Uzbekistan:

- According to the report on the results of 2019, 19.9 bln. 104 billion soums as a result of overspending, purchase of medicines and medical equipment at high prices in the Ministry of Health. overspending of budget funds in soums²;

- According to the report on the results of 2020, 671.3 billion rubles were allocated from the state budget and special funds. 23.8 billion soums deficits and appropriations, 23.8 billion in funds allocated from the anti-crisis fund. that the deficit of soums and illegal expenses were detected³;

- According to the report on the results of 2021, 971.1 billion was spent in 763 cases during state procurement. 677.6 billion soums due to conflict of interests, legality of state purchases. it was noted that errors and omissions amounting to 3.5 trillion soums were committed during tenders⁴.

In the Republic of Uzbekistan in 2018-2021, 283 criminal cases related to violations of the law in the field of public procurement were initiated, most of them in Syrdarya region (56 cases), Tashkent city (40 cases), Fergana region (30 cases) and Navoi region (26 cases).) contributed. 508 persons were held criminally liable in 272 criminal cases related to violations of state procurement laws. 121.2 billion to state interests in connection with these criminal cases. it was determined that damage was caused.⁵

The results of these reports and statistics show that the legislation of the Republic of Uzbekistan on combating crimes in the field of public procurement does not show its effective measures. In the case of increased cases of corruption in the

¹ See: <https://lex.uz/docs/4875784>.

² See: Ўзбекистон Республикаси Ҳисоб палатаси 11.05.2020 йил <http://www.uzreport.news/politics>.

³ See: SQ-272-IV-сон 23.04.2022. Ўзбекистон Республикаси Ҳисоб палатасининг 2020-йилдаги фаолияти тўғрисидаги ҳисоботи ҳақида <https://lex.uz/uz/docs/-5418885>.

⁴ See: SQ-531-IV-сон 29.04.2022. Ўзбекистон Республикаси Ҳисоб палатасининг 2021-йилдаги фаолияти тўғрисидаги ҳисоботи ҳақида <https://lex.uz/uz/docs/-6000473>.

⁵ See: 2022 йил 5 апрел Ўзбекистон Республикаси Олий Мажлис Сенатида Коррупцияга қарши курашиш миллий кенгашининг навбатдаги мажлисидан: <https://www.gazeta.uz/uz/2022/04/06/corruption/#!>.

field of public procurement, it is necessary to strengthen accountability measures against individuals, in particular, representatives of the authorities¹.

In conclusion, considering the fact that the number of crimes in the field of public procurement is growing, as a result of which the cases of misappropriation and illegal spending of state funds are increasing, crimes in this field are classified as various crimes in the investigation and judicial authorities, establishing separate criminal responsibility for committing crimes in the field of public procurement must Adding the following new article to the fifteenth chapter of the fifth section of the Civil Code of the Republic of Uzbekistan:

Deliberate violation of public procurement procedures

Deliberate violation of public procurement, i.e. e-shop, auction, selection of the best offers, tender, direct contracts, as well as conclusion of contracts knowingly causing damage to the owner, sales or auction organizer, buyer or other economic entity or state interests if it causes a large amount of damage, -

shall be punished by a fine of two hundred to four hundred times the amount of the base calculation, or compulsory community service of up to three hundred and sixty hours, or imprisonment from three to five years.

If the act was committed by a group of persons with prior criminal conspiracy,

-

shall be punished by imprisonment for five to eight years.

That act:

a) causing a large amount of damage;

b) committed by an organized criminal group or for its interests, -

shall be punished by imprisonment from eight to twelve years.

A person will be released from punishment if the material damage caused is covered in three times.

¹ О.Н.Ходасевич Е.Ю.Шаламова Коррупция в сфере государственных закупок // Научно- методический электронный журнал “Концепт”. – 2018. –№ 3 (март). – 0,4 п. л. – URL: <http://ekconcept.ru/2018/183012.htm>.