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## SOME CRIMINAL LEGAL CONSIDERATIONS REGARDING CRIMES IN THE FIELD OF PUBLIC PROCUREMENT

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### ABSTRACT

The article states that the high share of public procurement in public expenditures by the author is an indicator of how important it is to comply with the legislation in the implementation of Public Procurement, and that these expenditures indicate the degree of social danger of illegal actions in the field of Public Procurement.

It is also concluded that the object of the content of crimes in the field of public procurement is literally directed against the economic foundations of the state, in other words, criminal aggression undermines the economy of a particular country. In addition, it is noted that socially dangerous acts in the field of public procurement, by their nature, are among the crimes not only of a national, but also of an international nature and pose a threat not only to the financial and economic stability of a single state in the context of globalization, but also to the international community.

It is noteworthy that in the criminal legislation of the Republic of Uzbekistan there is no clear category of crimes in the field of Public Procurement. It is determined based on the nature of the Committed Act. Although the current criminal law does not provide for a concrete socially dangerous act related to "public procurement", but socially dangerous acts in the field of Public Procurement exist today in society as a crime phenomenon. In this context, proposals related to the proposal to criminalize offenses in the field of Public Procurement were analyzed.

### KEYWORDS

State expenditures, state procurement, economic foundations of the state, financial and economic stability, offenses in the field of Public Procurement, criminalization of offenses in the field of Public Procurement.

## INTRODUCTION

One of the important indicators of public procurement is the share of public procurement in public expenditures. In today's economic conditions, the strengthening of the budget deficit in world countries creates the need to improve the public procurement system. In the countries of the organization for Economic Cooperation and development, the state budget expenditures for Public Procurement in relation to GDP are on average equal to 12% [1]. The member countries of this organization are directed to state procurement, which costs 43% of the state budget.

In low-income countries, however, public procurement is estimated at 10-15 percent compared to GDP, up to 25 percent in developing countries, and 30 percent or higher in developed countries [2].

According to the organization for Economic Cooperation and development, the share of public procurement in public spending is 41.6% in Japan, 40.1% in Korea, 35.3% in Germany, 31.7% in the UK, 25.6% in France, 24.5% in the US. It is also established that in order to support local enterprises in the field of public procurement, price preferences will be given in Brazil by 8-25%, in Mexico and Egypt-by 15%, in Malaysia-by 2.5-10% [3]. These figures not only show how important it is to comply with the legislation in the implementation of public procurement, but also determine the degree of social danger of illegal actions in the field of Public Procurement.

Expansion of coverage of Public Procurement, ensuring openness and transparency, digitization of the system creates the need to improve the system of Public Procurement, as well as to improve the system of crime prevention in this regard.

In this regard, ensuring the openness of the public procurement system requires targeted and targeted use of budget funds. There are also cases of instability of the share of public procurement in relation to macroeconomic indicators, including gross domestic product, the volume of budget expenditures and state budget revenues [4].

Although socially dangerous acts in the field of Public Procurement, which pose a threat to the financial and economic stability of any state, are not defined as a separate criminal structure, by carrying out its legal analysis, one can get a clear picture of corruption crimes committed in the field of public procurement in a comprehensive manner.

What is public procurement itself? According to the legislation, the process of ensuring the needs of state customers for goods (works, services) on a paid basis is recognized as public procurement [5].

In the criminal legislation of the Republic of Uzbekistan, as crimes in the field of Public Procurement, article 167 (embezzlement or robbery by rastrata), Article 168 (fraud), Article 171 (acquisition or transfer of property found by criminal means), Article 175 (conclusion of transactions in violation of the interests of the Republic of Uzbekistan), Article 178 (concealment of foreign currency), Article 1841 (budget and estimate-violation of State discipline), Article 205 (abuse of power or career authority), Article 209 (career fraud), Article 210 (bribery), Article 211 (bribery), crimes provided for in Article 212 (mediation in receiving and issuing bribes), Article 213 (deviation of the employee of a state body, an organization with state participation or a citizen's self-government body for a bribe), Article 214 (legalization of income from

criminal activity), Article 243 (illegal acquisition of material values or property interest of a servant of a state body, Because the actions indicated can be committed during the implementation of public procurement from the objective side. Crimes provided for by Article 175 of the CC (making transactions in violation of the interests of the Republic of Uzbekistan),

Article 1881 (illegal activities involving funds and (or) other property),

Article 243 (legalization of income from criminal activity) can be committed in the field of Public Procurement.

It should be noted that socially dangerous acts in the field of public procurement, by their nature, are not only among crimes of a national, but also international nature, and in the context of globalization, pose a threat not only to the financial and economic stability of a single state, but also to the international community. One of the socially dangerous acts in the field of public procurement is clearly manifested in the legalization of income from criminal activities.

As early as 2009, revenues from criminal activity accounted for 3.6% of the entire world GDP, and 2.7% (US \$ 1.6 trillion) were legalized in this, according to a statement made by the UN Office for the fight against drugs and crime as a result of a study. According to the information provided by the International Monetary Fund of 2018, the total volume of legalized income around the world can be 5-7% of the entire world GDP [6].

A detailed analysis of its objective signs when studying the composition of a particular crime – allows you to draw a clear and correct conclusion about them. Objective signs of a crime in general are understood as

the characteristics of a particular crime regarding its object and objective side. An act worthy of criminal punishment – an analysis of the composition of a crime begins with the identification of the object of the crime. "Object "is derived from the Latin word and means" I will put against". The object of the crime, on the other hand, expresses in itself the social relations that are associated with the values, wealth, protected by criminal law. The correct identification of the object aimed at criminal aggression makes it possible to determine the nature of the crime, the legal nature, the degree of its social danger. The object of the crime is one of the important and complex issues of the theory of criminal judgment. Based on the fact that in the definition of the concept of the object of a crime, the issue of the nature and direction of damage caused by an act of criminal punishment or at risk of transmission should be taken as a basis, scientists consider the object of the crime as: social relations, human (people), human rights, certain social (legal) [7]. Crimes in the field of public procurement are literally directed against the economic foundations of the state.

In this case, the State customer is understood as a legal entity that carries out public procurement. In the implementation of Public Procurement, an agreement is concluded on this right. Its content consists in an agreement between the State customer and the executor of Public Procurement on the establishment, modification or cancellation of rights and obligations on public procurement. In accordance with the law, the subjects of public procurement are:

- State customer;
- Participant of shopping procedures;
- Executor of Public Procurement;
- Procurement Commission;
- Operator of the electronic system of Public Procurement;

- Specialized organization and expert, expert organization.

State procurement as an operator of the state procurement electronic system of the Republican commodity and raw materials exchange of Uzbekistan in order to simplify the participation of customers and suppliers in public procurement in

2021 xarid.uzex.uz a new single portal has been introduced.

On this portal, all types of Public Procurement were combined and a single classifier of goods and services was introduced, reflecting all the parameters of products. This, in turn, makes it easier to place lots on the portal and helps to eliminate problems with the supply of low-quality goods to customers [8].

The development of digital technologies in world countries and the strengthening of the budget deficit create the need to improve the public procurement system. In the countries of the organization for Economic Cooperation and development, the state budget expenditures for Public Procurement in relation to GDP are on average equal to 12%. The member countries of this organization are directed to state procurement, which costs 43% of the state budget. In this regard, ensuring the openness of the public procurement system requires targeted and targeted use of budget funds. Scientific research is being carried out on the legal and institutional foundations of the world public procurement system, procurement processes, procurement-related risk management and accountability, coverage of public procurement in the implementation of budget expenditures and their publication, improving the electronic procurement system to increase the transparency of the public procurement system. There

are also cases of instability of the share of public procurement in relation to macroeconomic indicators, including gross domestic product, the volume of budget expenditures and state budget revenues.

Today, corruption crimes in the field of public procurement are mainly committed in the absence of tenders, falsification of documents, the conclusion of direct contracts and other methods.

Socially dangerous acts in the field of public procurement of this type, by their nature, are among the crimes not only of a national, but also of an international nature, jeopardizing the financial and economic stability of a single state in the context of globalization, as well as the international community.

The criminal legislation of the Republic of Uzbekistan does not contain a specific category of crimes in the field of Public Procurement. It is determined based on the nature of the Committed Act. Although the current criminal law does not provide for a concrete socially dangerous act related to "public procurement", but socially dangerous acts in the field of Public Procurement exist today in society as a crime phenomenon.

It is known that a significant part of the crimes committed in the field of public procurement is often carried out by newly created firms. The practice of using fake firms or firms registered in someone's name for committing offenses has expanded significantly. All e-commerce systems of public procurement in order to improve the activities of public procurement platforms in order to prevent such situations (dxarid.uzex.uz / exarid.uzex.uz / shop.uzex.uz / eshop.uzex.uz / milliydokon.uzex.uz / emilliydokon.uzex.uz) suspension of activities and from January 5, 2022, all purchases by state customers (budget and corporate)





are uniform xarid.uzex.uz it was established to be carried out through the electronic system.

Recently, scientists conducting research on this topic propose to criminalize violations in the field of Public Procurement. In particular, the implementation of public procurement by an official through the conclusion of a contract that is not useful to the state in advance knowingly represents objective signs of the content of the crime provided for by the norm of Article 175 of the Criminal Code. Also, these actions are part of the Criminal Code

According to Article 207, a cold-blooded look at an official, that is, a state body, an organization with the participation of the state or a self-governing body of citizens, may also be characterized by a large amount of damage or serious damage to the rights of citizens or interests protected by law, or to the interests of the state.

In this regard, the criminalization of acts related to the "deliberate elimination of competition at auctions" is in accordance with the signs of objective aspects of administrative offenses and criminal content associated with violations of competition legislation provided for by the Criminal Code and Code of Administrative offences, legislation on natural monopolies and legislation on the protection of consumer rights.

It should also be understood that only legal entities affiliated with the trade organizer are allowed to participate in an effort to eliminate competition in auctions by deliberately winning by deception, in order to show that the competition is being held legally.

Elimination of competition can also be qualified as a crime of abuse of career authority (Article 205 of the JC). In this case, the technical conditions are

introduced by the official, which are developed in advance by breaking the law into the competition documents, preventing other suppliers from participating, as a result of which the supplier to whom the language is attached in advance will win the competition sales [9].

As noted above, the proposed methods of criminalization of violations in the field of Public Procurement do not even correspond to the principle of prosessual implementation of harassment, which is the systemic and legal principle of criminalization [10]. The criminal law, which, in the essence of this principle, establishes liability for a particular act, can be put into practice and sufficiently effective if all the signs of the content of the crime provided for by the law are normally proved by the rule [11]. When making purchases for the needs of the state, the responsibility for each stage lies with various officials. In particular, one official is considered responsible for placing the procurement announcement in print and the internet, while another is engaged in the preparation of selection documents and the formation of requirements for the product being purchased. And the conclusion of contracts for public procurement is carried out by an official according to the decision of the selection committee [12].

Therefore, it is difficult to prove exactly which person's actions resulted in a "contract concluded for the state, which did not have any known benefits in advance", "competition in sales was eliminated" or "a state purchase was made that led to damage." At the same time, in the broad interpretation of the above-mentioned options for criminalization, the possibility of bringing to criminal liability an official who was harmed or participated in the conduct of any public procurement with limited competition is created.

In conclusion, it should be said that as one of the priorities of improving criminal legislation, ensuring the inevitability of responsibility for new types of criminal acts, in particular, the establishment of responsibility for crimes in the field of public procurement in legislation and their correct implementation in practice sharply reduce the level of lateness of crime in the region, by combating crime, the state budget has a significant impact to reduce costs.

## REFERENCES

1. <https://www.oecd.org/governance/public-procurement/>
2. Ponomareva O.V. Public procurement as a tool of trade policy in developing countries//Russian Foreign Economic Bulletin, No. 9, 2014. –p.101.
3. <https://stats.oecd.org/Index.aspx?QueryId=94406h>
4. Atamuradov T.T. Improvement of public procurement in Uzbekistan. Iqt. science. doctor of Philosophy (PhD) scientific dar. abstract of the dissertation written to obtain. - T., 2021. - p.5.
5. Law of the Republic of Uzbekistan "on public procurement". National database of legislative information, 23.04.2021., 03/21/684/0367
6. <http://www.fatf-gafi.org/faq/moneylaundering/>
7. Sevryukov A.P. Embezzlement of property: criminological and criminal-legal aspects. – M.: Exam, 2014. – p. 107.
8. <https://review.uz/oz/post/2021-yilda-davlat-xaridlarining-elektron-savdo-tizimida-1018-mlrd-dollarlik-bitimlar-tuzilgan>
9. N.Imamav, M.Kurbanov. Some aspects of liability for offenses in the field of Public Procurement. Analysis of the legislation of Uzbekistan. 2/2018 year. No. 2. pp. 29-31. [https://tsul.uz/files/pdf/uzb\\_qonunchiligi\\_tahlili/2018\\_2.pdf](https://tsul.uz/files/pdf/uzb_qonunchiligi_tahlili/2018_2.pdf)
10. Guk D.V. Issues of criminal legal qualification of the use of "one-day firms" for embezzlement of funds // Business in law. 2013. - No. 1. – p. 52.
11. Guk D.V. On the issue of additional criminalization in the Criminal Code of the Russian Federation of violations of legislation in the implementation of public procurement // Legal Science. 2013. No. 2. – p. 43.
12. Sizov V.A. Problems of detection and suppression of crimes related to illegal cash withdrawal and the creation of "one-day firms" // Social Sciences. Right. 2016. No. 2 (38). – p. 102.