

## **SOME ISSUES OF PREVENTION OF CRIMES IN THE AREA OF PUBLIC PROCUREMENT**

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**Abstract:** In this article, the author highlighted some issues of crime prevention in the field of public procurement. The author notes that the study of the causes and conditions of crime in the field of public procurement, as well as the true essence of the law of causality, allows us to understand the essence of these types of crimes, with which we can fight such acts and prevent them. The author also stressed that crimes in the field of public procurement by their nature are not inferior to corruption crimes in terms of the degree of public danger, the subject of a crime in corruption crimes can be not only material costs that are given in cash, but also tangible property in a different style. The article also proposes to supplement the Criminal Code of the Republic of Uzbekistan with article 183<sup>1</sup> (violation of the law on public procurement). In turn, it is noted that technical measures are also important in preventing crimes in the field of public procurement. In particular, conducting a judicial audit with the involvement of international experts, conducting post-transactional control post and ex control - the introduction of technical measures, such as post-purchase monitoring, reducing the human factor in public procurement, in particular, digital identification of customers in public procurement, the effectiveness of the implementation of the Scoring system of public procurement participants is justified.

**Keywords:** public procurement, public customer service, procurement commission, electronic public procurement system, budget allocations, conflict of interest, criminalization, post-transaction control, reduction of the human factor, digital identification of customers, Scoring system.

### **Introduction**

In the conditions of the Global economic crisis, an increase in the budget deficit in a number of countries creates the need to improve the system of Public Procurement. In the countries of the Organization for Economic Cooperation and Development, state budget expenditures on public procurement in relation to GDP amount to an average of 12 percent [1]. 43 percent of the state budget expenditures of the member states of this organization are directed to public procurement.

In low-income countries, public procurement accounts for 10-15 per cent of GDP, in developing countries up to 25 per cent and in developed countries up to 30 per cent and above [2].

One of the important indicators of public procurement is the share of public procurement in public expenditure. 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 USA. It is also established that in order to support local enterprises in the field of public procurement, price preferences will be given up to 8-25% in Brazil, 15% in Mexico and Egypt, 2,5-10% in Malaysia [3]. These figures not only indicate the importance of compliance with the legislation in the implementation of public procurement, but also determine the level of social danger of illegal actions in the field of Public Procurement.

In this regard, there is a need to expand the coverage of public procurement, ensure openness and transparency, digitize the system, improve the public procurement system and improve the crime prevention system.

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

Although socially dangerous acts in the field of public procurement that endanger the financial and economic stability of any state are not defined as a separate crime, it is possible to draw up a clear picture of corruption crimes committed in the field of public procurement in a comprehensive manner by carrying out its legal analysis.

As abovementioned, the development of digital technologies in the countries of the world and the deficit of the budget create the need to improve the system of Public Procurement. In the countries of the Organization for Economic Cooperation and Development, state budget expenditures on public procurement in relation to GDP amount to an average of 12 percent. 43 percent of the expenditures of the state budget of the member States of this organization are directed to public procurement. In this regard, ensuring the openness of the public procurement system requires targeted and targeted use of budgetary funds.

Scientific research is conducted on the legal and institutional basis of the global public procurement system, procurement processes, risk management and accountability related to procurement, public procurement coverage in the implementation of budget expenditures and their announcement, improving the

electronic procurement system, increasing 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, budget expenditures and state budget revenues.

### **Material and methods**

To study some issues of prevention of crimes in the field of public procurement, to analyze the norms of legislation that provide for the profile of these types of crimes. For this, methods of scientific knowledge, such as analysis, historical-comparative method, abstraction and comparison, were used.

### **Results**

Today, corruption crimes in the sphere of public procurement are mainly committed in the form of non-tender conduct, falsification of documents, the conclusion of direct contracts and other methods.

Socially dangerous acts in the sphere of public procurement of this type are, by their nature, committed not only in the ranks of crimes of national, but also of international character, endangering the financial and economic stability of a single state, as well as the international community in the conditions of globalisation.

In the criminal legislation of the Republic of Uzbekistan there is no specific category of crimes in the field of Public Procurement. It is determined by the nature of the act committed. Although the current criminal law does not provide for a concrete socially dangerous act associated with "public procurement", but socially dangerous acts in the field of Public Procurement exist today as a crime phenomenon in the society.

Crime in the field of Public Procurement as a criminological phenomenon is a product of the influence of a large number of circumstances, factors and causes related to the same relationship.

Since it is required to determine as much as possible the circumstances that determine the content and structure of the phenomenon under study for a thorough and thorough study of crimes, these actions will primarily consist in determining the relationship between the cause and the consequence, the mutual ratio of certain factors and conditions.

As G.Kuanalieva noted, in order to determine the cause of the crime and make effective individual profiling of crimes, it is necessary to study the identity of the criminal, it is important to determine the subject, such as the look, goals and directions inherent in the human personality [5].

The causes of crime are the main problems of criminology. It is the solution of this problem that determines the scientific content of the theory of criminology, its practical orientation. Professor K.R.Abdurasulova noted that the category of causality includes not only

the cause, but also the condition, the result (outcome), the relationship between them, as well as the feedback between the cause and the result [6]. Also on this issue M.Usmanaliev and Y.Karaketov also thought and wrote that ‘each reason and outcome is interconnected, and the sum of events, circumstances forms a certain environment, and the processes in this environment ensure the development and origin of any phenomenon’ [7].

Based on the above points, the study of the causes and conditions of crime in the field of Public Procurement, as well as the true essence of the law of causality, provides an opportunity to combat and prevent the occurrence of these types of crimes, through which they are committed [16]. Z.Zaripov and I.Ismailovs argue that in the study of the problem of the causes of crime it is worthwhile to look at it as ‘a crime is a separate type of socially violated behavior, which has a personal moral and psychological basis’[8]. This gives us the opportunity to answer questions such as what are the social roots of a person who lies on the basis of the crimes committed in our society in the opposite direction to society, what is the possibility of such a direction to be formed and to be.

What is public procurement itself? According to the legislation, the process of providing the needs of state customers for tokens (works, services) on a paid basis is recognized as public procurement [9]. A state customer is a legal entity engaged in public procurement. When carrying out public procurement, a contract is concluded for this right. Its content consists in an agreement between the State Customer and the contractor of public procurement on the transfer, modification or cancellation of rights and obligations for public procurement. According to the law, the subjects of public procurement are:

- State customer;
- participant of shopping procedures;
- executive of Public Procurement;
- purchase Commission;
- operator of Public Procurement electronic system;
- specialized organization and expert, expert organization.

The development of digital technologies and the deficit of the budget create the need to improve the system of Public Procurement. In our country, the most important part of the economy during the implementation of public procurement, corruption cases in the banking and financial sector, the use of career status, such as purposeless spending or looting of budget funds, such cases are doomed. In this regard, it should be noted that the Anti-Corruption Agency violated the laws ‘On public procurement’ and ‘On competition’ in the process of holding 18 competitions and tenders in Andijan region, 11 in Jizzakh Region, 7 in Navoi region, as well as the requirements of other legislation normative-legal documents, in the construction

facilities the state budget was allocated 19.6 billion it was determined that the sum was damaged.

At the same time, the Ministry of Housing and Communal Services and its subsystems allocated \$154.4 billion for projects on 5033 violations, providing the population with drinking water. it became known that this amount was spent in an inappropriate way.

In addition, the presence of 4,836 errors and omissions in public procurement in the Ministry of Water Resources and its subordinate organizations amounted to \$704 million in the budget. it was found that the amount was damaged.

'Regional electric networks' in the system of the Ministry of Energy received 10.4 billion soums in 2019-2020. the amount of 512 contracts concluded amounted to 1.9 billion soums. if data on contracts worth 20 thousand will be posted on a special information portal no later than three days, then 2.4 billion. Data on contracts worth 10 thousand soums are not published at all.

As a result of these studies, a total of 14 criminal cases were initiated under 167, 205, 209 and other articles of the Criminal Code [10].

Although the current Criminal Code does not define socially dangerous acts in the field of public procurement as a separate crime, after conducting its legal analysis, it is possible to come to a clear picture of crimes committed in the field of public procurement in a comprehensive manner.

One of such actions is the conclusion of an agreement in the interests of the Republic of Uzbekistan in a disastrous way, abuse of official position, the possibility of a conflict of interest in the process of public procurement, as well as falsification and forgery of documents in this process. Also, although the current criminal legislation does not provide for criminal liability as part of a separate crime for crimes in the field of public procurement, the nature of such crimes and the nature of the crime on the grounds of the object of the act 167, 168, 171, 175, 205, 209, 243 - you can specify the acts provided for in the articles. However, the actions shown may take place during the implementation of public procurement by the facility. In the field of public procurement, crimes may be committed under articles 175 (conclusion of transactions in the interests of the Republic of Uzbekistan), 188<sup>1</sup> (illegal activities related to the attraction of funds and (or) other property), 243 (legalization of proceeds from criminal activity) of the Criminal Code.

The most important thing is that crimes in the field of public procurement are by no means inferior to corruption crimes in terms of the degree of public danger. In corruption crimes, the subject of the crime may be not only tangible assets that are issued in cash, but also tangible property of another sample. Crimes in the field of public procurement in the form of "appropriation" of the state budget are committed

by officials through a state order or financing through procurement. The bund is expressed in the fact that goods and services within the framework of procurement or state order are expensive up to 20-50% of the market supply or imported analog in favor of the interested person. Illegal funds received from the difference in the middle can be released abroad through import operations. These cases clearly show that there is a need to improve the prevention of this type of crime.

A particularly important role is played by the system of measures at the general social level in the Prevention of crimes in the economy. Special measures and general public measures for the Prevention of this type of crime are distinguished.

Special measures are preventive measures aimed directly at eliminating the causes and conditions of the crime. However, it should be noted that special measures are inextricably linked with public measures. The effective implementation of public measures creates favorable opportunities for the application of special measures, and on the contrary, the use of special measures aimed at the Prevention of crimes of the analyzed category provides a favorable ground for the implementation of public measures.

Criminological studies show that in the Prevention of crimes of this category, General Social measures are especially important. Social measures carried out during the transition to a market economy must first of all: create conditions for free economic activity, for the realization of individual creative opportunities in the field of economic relations; open a wide path to entrepreneurial activity and its development; ensure the creation of equal conditions for all forms of ownership and equal protection of all legal aspects in the; it should be aimed at creating conditions for Real competition in all sectors of the economy; creating the necessary market infrastructure.

### **Conclusion**

Corruption in public authorities and management causes serious damage to the development of the country's economy. It not only does not cause direct material damage, but also undermines the trust of citizens in these bodies, hinders the implementation of the economic policy of the state.

As a rule, the following approaches are widely used in crime prevention:

- improving the level of legal literacy, legal awareness;
- criminalization of this act;
- tougher punishment for the crime committed;
- circumstances that lead to the commission of a crime, the establishment of certain restrictions in order to prevent determinants;
- to take targeted practical preventive measures aimed at crime prevention;
- introduction of victimological prevention.

It should be borne in mind that the criminalization of an act is associated with the social necessity of maturation in society, and this is one of the main directions for improving criminal legislation. And N. Lopashenko also understood criminalization as one of the ways to implement criminal law policy [11].

Accordingly, in order to prevent socially dangerous acts in the field of public procurement in the current criminal legislation, it is necessary to use criminal legal means, criminalize this act in order to prevent the embezzlement of state budget funds that are generated from taxpayers' accounts.

At this point, the question arises whether there is administrative responsibility for this type of (so-called) administrative offense, is there a need to introduce a separate criminal act?

In this regard, it should be noted that the Code of the Republic of Uzbekistan on Administrative Responsibility was supplemented by article 175<sup>8</sup> (violation of the Law on public procurement) by the Law of the Republic of Uzbekistan dated 2021 and numbered LRU–666 dated January 14 [12].

During the implementation of public procurement plans, including the formation and coordination of plans and schedules of the legislative body, as well as in cases provided for by the legislation on public procurement, he introduced on a special information portal such actions as violation of the procedure for placing public procurement announcements, mandatory discussion procedures and deadlines, deadlines for posting results.

In this sense, in today's conditions of improving criminal and criminal procedure legislation, M.Rustambayev proposes to establish responsibility within the framework of criminal law for abnormal criminal behavior (criminal offense), which, according to the degree of public danger, stands between administrative offenses and a crime. He noted that it is necessary to observe the fact that the behavior of an abnormal fetus (angular misconduct) is not of great importance from the point of view of public danger, as well as a separate regime of responsibility for its occurrence [13].

The legal and institutional foundations of the public procurement system, the procurement process, management and accountability of procurement-related risks, the coverage of public procurement in the implementation of budget expenditures and their announcement, increasing the transparency of the public procurement system by improving the e-procurement system, which determines the composition of a specific crime When studying the experience of foreign countries in this regard, it was determined, That a similar situation is also found in the criminal legislation of Russia, Kazakhstan, Belarus, Azerbaijan, Armenia.

In this regard, in our opinion, it is advisable to supplement the Criminal Code of the Republic of Uzbekistan with Article 183<sup>1</sup> (violation of the law on public procurement):

**Article 183<sup>1</sup>. Violation of the law on public procurement**

Intentional non-compliance with the procurement procedure established by the law on public procurement, the introduction of information, links, requirements or conditions restricting competition, failure to provide information about affiliation or conflict of interest in the procurement process, the introduction of knowingly false information or records in the procurement process, forgery or knowingly false information. the creation or submission of false documents can lead to significant damage or serious, —

is punished by a fine in the amount of two hundred to three hundred basic units, or deprivation of the right for a certain period of up to three hundred years, or compulsory community service for up to three hundred and sixty hours, or correctional labor for up to three years, or for

These actions are:

- a) too much;
- b) repeated or dangerous on the part of a repeat offender;
- C) preliminary language combination by a group of persons using;
- g) committed by abuse of official position or official position, —

is punishable by a fine in the amount of three hundred to five hundred basic units, or deprivation of the right to a fine of one hundred to three years, or restriction of liberty for a term of three to five years, or imprisonment for a term of three to five years.

Although, as noted above, administrative responsibility for actions in the field of public procurement is established, the proposed norm does not provide for administrative prelude. This situation is explained by the fact that if the act was originally an administrative offense for committing crimes consisting of exactly the same object, then, in our opinion, it makes sense to consider it as a crime when it was committed repeatedly within one year. However, this is also quite controversial. In particular, some scientists believe that the reflection of administrative bias in some norms of criminal law does not fully comply with the principles of humanism and justice, the repeated commission of administrative offenses within one year does not increase both the quality of the crime and the level of public danger, the person assumes that the consequences of responsibility should also be terminated after being brought to justice for the deed done. [14]. Accordingly, the proposed norm does not provide for administrative prelude.



As Volter said, fighting crime is not, on the contrary, their prevention is a real jurisprudence [15]. Even before us, from the point of view of criminology, the Prevention of crime should consist not only in the criminalization of the act or aggravation of responsibility, but also in the application of Social, Psychological and sociological methods of effective fight against crime.

Technical measures are also important in the Prevention of crimes in the field of Public Procurement. In particular, the implementation of the following technical measures can give a good effect:

- complete electronization of tender competitions;
- review the functions of the Anti-Corruption Agency, Ministry of Finance, Central bank, Department of economic crime and commercial banks in the fight against crimes in the field of Public Procurement;
- conducting Forensic audit with the involvement of international experts;
- posttransaction control post and ex control-monitoring after purchase;
- reducing the human factor in the field of public procurement, in particular, digital identification of customers in public procurement;
- implementation of Public Procurement participants Scoring system;
- to increase the role and importance of NGOs in combating crimes in the field of Public Procurement.

Proceeding from the above, it can be said that the improvement in the Prevention of crimes in the field of public procurement will serve to increase the transparency of the public procurement system through the legal and institutional framework of the public procurement system, increase the transparency of the public procurement system by improving the processes of procurement, the management of risks associated with procurement, the coverage of public procurement in the implementation of budgetary costs and their announcement, the system of electronic procurement.

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