



ISSUES OF PREVENTION OF CORRUPTION CRIMES IN THE FIELD OF PUBLIC PROCUREMENT

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ABSTRACT: - In this scientific article, the author comprehensively considers the issues of further improvement in the Republic of Uzbekistan of activities to prevent criminal offenses in the field of public procurement. In particular, the analysis of the state and dynamics of corruption crimes in this area was carried out. The most crime-prone industries and spheres, the circle of the most frequently committed crimes in the field of public procurement have been identified. Thus, it is indicated that most of the identified corruption crimes are observed among public education officials, then the healthcare sector, employees of banks, preschool institutions, geodesy and cadaster, secondary education, employment and labor relations, employees of khokimiyats, etc. In addition, the author emphasizes, in the construction industry, corruption crimes are mostly associated with the allocation of land, holding tenders, registration of urban planning documents, processes of connection to engineering and communication networks. The reasons contributing to the commission of crimes, as well as countermeasures and prevention measures are analyzed.

KEYWORDS: Public procurement, corruption, misuse of funds, statistics, Anti-Corruption Agency, «rollback», abuse.

INTRODUCTION

The public procurement system is an effective tool for concentrating the necessary resources

(material, labor, scientific) for the implementation of the tasks set by the state [1]. It is one of the fundamental institutions of

“ISSUES OF PREVENTION OF CORRUPTION CRIMES IN THE FIELD OF PUBLIC PROCUREMENT”

state regulation, since in a mixed economy the state becomes the largest customer and consumer of products from a number of industries, turning state demand into a powerful tool for influencing the economy, having a positive impact on its dynamics and structure.

However, the public procurement system has its own serious problems, among which are the vagueness and inconsistency of the rules for the distribution of budgetary funds, the lack of really effective control over the implementation of the norms and rules for placing orders, the complexity of information support for placing orders. These problems create favorable conditions for the development of the criminal sphere [2].

The list of crimes committed in the field of public procurement includes not only offenses directly related to this system, but also those crimes that indirectly relate to it. In this article, we will highlight the main three types of offenses.

The first type is crimes directly related to government orders. The essence of the "kickback" is the provision by the contractor to the official of illegal remuneration in the amount of part of the price of the state contract [3]. According to data obtained by some researchers, remote monitoring of public procurement in 2021 revealed violations of the laws "On Public Procurement" and "On Competition" in 452 tenders worth 145.3 billion soums [4].

The areas of illegal activities of officials can be: receiving illegal remuneration from the winner of competitive and other procurement procedures, unreasonable overestimation of the cost of a state contract when announcing procurement procedures, etc.

The second type is crimes with a corruption focus. In 2020, the Anti-Corruption Agency, together with colleagues from other law enforcement agencies, prosecuted 1,723 officials who caused damage to the state in the amount of 500 billion soums. By the way, the confiscated property compensated for the damage by 71%, that is, by 355 billion soums.

The largest number of identified corrupt officials was observed among public education officials. They are followed by health officials, banking, preschool education, geodesy and cadastre, secondary education, employment and labor relations, employees of khokimiyats, etc.

In the construction industry, corruption crimes are mostly associated with the allocation of land, holding tenders, registration of urban planning documents, processes of connection to engineering and communication networks. For two years (2020-2021), 1233 persons were brought to criminal responsibility in the construction industry.

There is a practice of identifying contractors for construction work financed from the budget, either through acquaintances or for a bribe. For example, the deputy head of the capital construction department of the Tashkent khokimiyat and the head of a department of the Chilanar district khokimiyat demanded \$1.4 million from a construction company for allocating land for the construction of a multi-storey building. Officials were detained while receiving 50 thousand dollars [5].

Geographically, the largest number of those brought to justice is not in Tashkent, but in the Tashkent region, followed by Samarkand, Jizzakh, Surkhandarya, Ferghana and other regions of Uzbekistan. In 2020, 78 corruption cases were initiated in Tashkent.

In the first half of 2021, 1,676 corruption cases were brought to court against 2,544 officials. Material damage was caused in the amount of 592.5 billion soums [6].

The most high-profile cases are related to damage to the national interests and international image of Uzbekistan. These are crimes in the highest echelons of power, each of which caused property damage of more than \$1 million [6]. Bribery has actually become “institutionalized” in the authorities, undermining the confidence of the population, hindering the realization of public interests, causing damage to cooperation with other states, social and investment policies.

The third type - misappropriation of funds - is one of the most common violations of budget legislation. Thus, the Department of State Financial Control of the Ministry of Finance of Uzbekistan in the first quarter of 2021 conducted 1905 control checks, which is 556 more than in the same period last year. At the same time, during inspections on the intended use of budgetary funds, violations of budgetary discipline, shortages of cash and inventory, as well as unjustified expenses in the amount of 211.2 billion soums were revealed - 5.7 times more than the same period last year (37.1 billion soums). Of these, 192.3 billion soums were reimbursed to the budget [7].

This category of crimes should also include offenses committed during misuse of state non-budgetary funds (acquisition of various assets with a view to their subsequent sale, financing from the budget of expenses not provided for by the expenditure items of the corresponding budget, etc.) [8].

In order to trace the trend in the development of crimes of this type, it is necessary to turn to statistics and determine the dynamics of their commission.

It is worth noting that Uzbekistan is one of the 16 countries that demonstrate a long-term positive trend in the fight against corruption. Thus, according to the Transparency International Corruption Perceptions Index, Uzbekistan, since 2010, has been improving its position every year. In 2019, Uzbekistan ranked 153rd out of 180 with 25 points, while in 2010 it ranked 172nd with 16 points.

According to Transparency International's 2016 Global Corruption Barometer, only 18% of respondents in Uzbekistan reported that they had paid bribes, and only 23% of respondents listed corruption as one of the top three problems in the country. According to surveys of respondents, the most corrupt were the traffic police (17% of respondents admitted that they had given them bribes) and education and healthcare workers (16% of respondents). When asked what prevents respondents from reporting corruption, 39% answered that they did not know the answer to this question, and the second most common answer, which scored 17%, sounded like this: “for fear of negative consequences” [9].

In Uzbekistan, identified corruption offenses indicate that the most corrupt areas are state-owned enterprises and institutions, internal affairs bodies and banks. Most of these areas coincide with those identified by the population in the course of surveys. At the same time, the commission of corruption crimes by officials from 2013 to 2017 decreased by 43%, namely, for various corruption crimes by the prosecution authorities from 2015 to 2017. 8572 criminal cases were initiated (2015 - 3778, 2016 - 2860, 2017 - 1934) against 14171 persons (2015 - 6853, 2016 - 4524, 2017 - 2794) [9].

However, it should be noted that since 2020 the dynamics of corruption crimes has been

“ISSUES OF PREVENTION OF CORRUPTION CRIMES IN THE FIELD OF PUBLIC PROCUREMENT”

positive, as evidenced by the data provided by the Agency. Thus, in the first half of 2021, criminal cases were initiated against 2,544 officials for corruption violations. The total amount of damage is estimated at 592.5 billion soums, while in 2020 it amounted to about 500 billion soums [10].

By the way, according to the director of the Agency A. Burkhanov, in a year and a half, 5 out of 55 criminal cases were assessed as harming the national interests and international image of Uzbekistan. The main criteria for this were a wide discussion of cases in the media and social networks, the commission of crimes by high-ranking officials and damage in excess of \$ 1 million [10].

According to the OECD, one of the world's best practices for regulating procurement activities and countering violations is recognized as the experience of the United States, where it is the federal contract system (FCS) that has been used for about 90 years.

The US FCC is governed by the Federal Planning, Placement, and Execution of Government Orders, which contain about 4,300 rules and regulations. In the US legal system, an important role is played by judicial precedent, with the help of which the content of the definitions of “public contract”, “kickback”, “bid rigging”, etc. is clarified (these concepts are not specified in Russian legislation) [11].

The second striking example of a developed sphere of public procurement is Germany, where the system of contesting the results of placing a state order in court is considered one of the most successful in the world. It consists of the appellate instance and the court and provides for an accelerated procedure for considering complaints about the actions of the customer. It also provides for large fines

for bribery, which can be up to 10 million euros [12].

В целях формирования единообразной судебной практики представляется уместной подготовка отдельного постановления Пленума Верховного Суда, посвященного всему спектру коррупционных проявлений в сфере государственных закупок, которое позволит унифицировать практику применения уголовно-правовых норм в данной сфере. Структуру такого постановления можно представить следующим образом.

Во-первых, требуется обобщение практики применения закона Республики Узбекистан «О государственных закупках» в части правовой характеристики закупочных процедур и типичных нарушений при их проведении.

Во-вторых, необходима характеристика коррупционных проявлений при проведении закупочных процедур, заключении, исполнении и принятии результатов исполнения государственного контракта. Уместным представляется подробное освещение особенностей преступлений, совершаемых должностным лицом — представителем заказчика, предпринимателями и др.

В-третьих, требуется подробная характеристика особенностей квалификации таких преступлений с разъяснением, в каких случаях могут применяться уголовно-правовые нормы о взяточничестве, хищении, злоупотреблении или превышении должностных полномочий.

Анализ опубликованной судебной практики показал, что по частоте применения за нарушения в сфере закупок, больше половины дел были возбуждены по статьям

167 (хищение путём присвоения или растраты) Уголовного кодекса — в отношении 1297 человек, 168 (мошенничество) — 420 человек, 210 (получения взятки) — 80 человек [13]. Это означает, что необходимо ужесточить уголовную ответственность за совершение данных преступлений.

Агентством были высказаны идеи касательно совершенствования работы по предупреждению нарушений в сфере закупок, в том числе:

ужесточить уголовную ответственность по статье 167 и 168 УК РУз («Хищение путем присвоения или растраты»);

вести в УК новую статью 175, предусматривающую уголовную ответственность чиновников, совершающих крупные государственные закупки у лиц, с которыми имеется конфликт интересов;

вести в УК исчерпывающее понятие «коррупционное преступление»;

при возмещении материального ущерба по статьям 167, 168, 202 УК ввести наказание в виде лишения свободы и четко определить критерии испытательного срока;

разработать критерии оценки дел как наносящих ущерб национальным интересам и международному имиджу Узбекистана (статья 175 УК);

внести изменения и дополнения в Уголовно-процессуальный кодекс касательно полномочий Агентства по расследованию коррупционных преступлений [13].

На наш взгляд, принятие и реализация данных предложений может дать позитивный эффект в противодействии правонарушениям в сфере

государственных закупок в Узбекистане и улучшить нормативно-правовую базу, правоприменительную практику.

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