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JUDICIAL PROTECTION IN PUBLIC PROCUREMENT DISPUTES AS A FACTOR OF ECONOMIC SECURITY

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Abstract. The article examines judicial protection in disputes regarding public procurement as a tool for ensuring the economic security of the state. It is substantiated that public procurement, being one of the largest channels for distributing budget funds, belongs to the areas of increased corruption risks, and therefore requires effective control and appeal mechanisms. It is shown that the national model of protecting the rights of procurement participants combines extrajudicial (administrative) appeal in the Antimonopoly Committee of Ukraine and judicial control as the final guarantee of legality. The quasi-judicial nature of the procedures for considering complaints by the appeal body and their practical effectiveness due to integration with the electronic system "Prozorro" are highlighted, in particular through the automatic suspension of procurement actions during the consideration of the complaint. At the same time, the emphasis is placed on the limited integration of judicial control with the electronic procurement infrastructure, which complicates the execution of decisions to secure the claim and sometimes leads to the formal nature of judicial protection. A comparative analysis of appeal mechanisms in Ukraine and EU countries (in particular, on the example of Poland) was conducted, which confirmed the compliance of the Ukrainian model with European approaches according to the general architecture of "quasi-judicial body – court", but at the same time revealed a significantly higher intensity of appeals to the appeal body in Ukraine and differences in the rates of satisfaction of complaints. It was concluded that judicial protection in the field of public procurement performs a preventive and restorative function: it deters abuse, creates legal certainty, supports competition and business confidence, and also promotes the rational use of public finances. It is proposed to direct further improvement of the system to increasing the efficiency of the execution of court decisions and strengthening the procedural and technical interaction of courts with the electronic procurement system.

Keywords: public procurement, judicial protection, administrative appeal, Antimonopoly Committee of Ukraine, Prozorro, economic security, corruption risks.

JEL Classification: H57, D73, K23, H83

1. Introduction

Public procurement constitutes a significant part of the economy and state expenditures, therefore its transparency and legality are an important factor of the economic security of the state. In conditions when billions of hryvnias of budget funds are spent through public tenders, there is a risk of corruption abuse, collusion of participants or discriminatory tender conditions. Effective judicial protection and mechanisms for appealing decisions in the field of procurement are designed to minimize these risks, guarantee fair competition and protect the rights of all tender participants. Accordingly, proper judicial control over procurement is not only a requirement of the rule of law, but also a factor in ensuring the rational use of state resources and investor confidence in the market. This article analyzes the role of judicial protection in public procurement as a component of economic security, in particular: the anti-corruption effect of appeals, guaranteeing the rights of investors and bidders, the impact of transparency and judicial control on the efficiency of public spending, as well as the comparative judicial practice of Ukraine and the EU in this area.

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The introduction of an electronic public procurement system naturally necessitates the creation and proper functioning of an effective mechanism for monitoring its work. Such a mechanism should ensure the stability and correctness of the system by obtaining complete, reliable and timely information on compliance with the requirements of legality and correctness of procurement procedures. This, in turn, forms the basis for a prompt response to identified violations and their elimination. Taking into account that public procurement is a method of managing budget funds, the relevant area traditionally belongs to the areas of increased risk of misuse or misappropriation of state financial resources, in particular in cases of non-compliance by customers with the principles and rules of procurement activities.

In this context, the analysis of the control system in the field of public procurement is primarily practical in nature and is aimed at increasing the effectiveness of its application. At the same time, the scientific and applied relevance of such a study is due to the need to form a comprehensive vision of the strengths and weaknesses of existing control instruments, to determine the place and functions of control in the general architecture of the public procurement system, and to outline the most effective means of influencing the behavior of subjects of procurement legal relations. Additionally, the relevance is enhanced by the emergence of new approaches and control procedures, the theoretical understanding of which still remains insufficient. Thus, in the period from late 2017 to early 2018, procurement monitoring was institutionalized in Ukraine as a separate, new element of the control mechanism. An important component of the national model of public procurement is the tool for appealing decisions and actions of customers out of court. On the one hand, the implementation of such a right reduces the likelihood of corrupt practices and minimizes the risks of discrimination of participants, and on the other hand, it contributes to improving the quality of procurement procedures and strengthening the internal stability of the system. Compared to judicial remedies, administrative appeal is distinguished by speed and practical efficiency, which is largely explained by its integration with the electronic procurement platform. In Ukraine, complaints in the field of public procurement are considered by the Antimonopoly Committee of Ukraine; by their legal nature, these procedures are quasi-judicial in nature, since they provide for the resolution of disputes by a public administration body with compliance with key procedural guarantees.

The issue of appeal in the field of public procurement has gained additional relevance in connection with the adoption of the Law of Ukraine "On Amendments to the Law of Ukraine "On Public Procurement" and Some Other Legislative Acts of Ukraine on Improving Public Procurement" dated September 19, 2019 No. 114-IX. The specified act actually revised the approach to appeal procedures at the conceptual level and enshrined it in an updated version, which objectively necessitates the need for a new scientific analysis of the relevant norms. Under such conditions, doctrinal elaboration and systematic interpretation of legislative amendments are necessary prerequisites for developing a stable, consistent and legally balanced practice of their application in the field of public procurement as a guarantee of the economic security of the state (On Amendments to the Law of Ukraine "On Public Procurement" and Certain Other Legislative Acts of Ukraine Regarding the Improvement of Public Procurement, 2019).

2. Literature Review

The relevance of studying administrative appeal procedures in the field of public procurement is enhanced by the fact that this mechanism is in practice the most effective extrajudicial way of protecting the rights and legitimate interests of participants in procurement legal relations.

The institutional aspect of the control system in the field of public procurement is primarily manifested through the activities of authorized subjects of state control, whose purpose is to identify violations of procurement legislation and apply administrative influence measures provided for by law within the scope of their competence. At the same time, control in this area is not limited exclusively to state instruments, as it also includes mechanisms of public control. Providing the public with effective opportunities to influence the provision of legality during procurement procedures can be considered one of the significant institutional advantages of public procurement reform. As a result, a two-element model is formed in which state and public control mutually reinforce each other, ensuring comprehensive supervision of compliance with legal requirements in the procurement sector. At the same time, in the course of reforming the public procurement system, there is an active change in the competence and practical capabilities of the above components: control tools are expanded and modernized, and powers between various control subjects are specified and delimited. This, in turn, actualizes the need for a thorough scientific analysis of the relevant system. The interaction of state and public control has not only a conceptual, but also a procedural content, which is confirmed, in particular, by the possibility of initiating monitoring of a specific procurement by the state financial control body – the State Audit Service of Ukraine – based on an appeal from representatives of the public.

Along with the implementation by the participant of the procurement procedure of the right to submit

appeals and demands for the elimination of shortcomings of the tender documentation, filing a complaint with the Authorized Appeal Body, as a rule, has a more tangible regulatory and preventive impact. The specified mechanism, firstly, increases the level of openness of a specific procurement and activates public interest in its course, and secondly, performs a deterrent function regarding possible abuses by customers, creating a real threat for them of negative legal consequences in case of violation of legislative requirements. The presence of a clear, predictable and effective appeal procedure objectively provides the appropriate institutional conditions for the implementation of effective and legally protected public procurement.

At the same time, in most cases, an appeal to the Authorized Appeal Body is a faster and more practically effective way to protect violated, unrecognized or disputed rights and legitimate interests of a bidder compared to the judicial procedure, which is due to the peculiarities of the administrative procedure and the terms of consideration of cases in courts. In this regard, the identification of characteristic features, problematic aspects and regulatory gaps of administrative appeal in the field of public procurement acquires significant scientific and practical significance, since it creates the basis for further improvement of the legal regulation of relevant legal relations.

In continuation of the above, it is advisable to focus on the correlation of judicial methods of appeal in the field of public procurement and extrajudicial administrative procedures for the protection of rights in relevant legal relations. The issues of administrative procedure, as well as the issue of its relationship with the administrative process, have occupied a prominent place in the scientific discourse of domestic administrative and legal doctrine over the past decades.

Among the scholars who have systematically developed this issue and made a significant contribution to its theoretical understanding, it is appropriate to note, in particular, V. B. Averianov (2006), T. O. Kolomoiets (2011), O. V. Kuzmenko (2007), R. S. Melnyk (2011), Yu. O. Leheza (2021; 2016), O. I. Mykolenko (2010), I. O. Kartuzova and A. Yu. Osadchyi (2008), V. P. Tymoshchuk (2010), O. M. Bandurka, M. M. Tyshchenko (2001), S. H. Stetsenko (2011) and others.

The y conceptual thesis advocated by the domestic administrative legal doctrine is reduced to the distinction between administrative procedural and administrative procedural law according to the criterion of the functional role of the main subjects of their implementation. The norms of administrative procedural law are primarily applied by public administration bodies and are aimed at ensuring the implementation of the rights, freedoms and legitimate interests of individuals and legal entities in the field of public administration. In contrast, within the framework of administrative procedural law, the leading role is played by courts that perform a protective (protective) function, guaranteeing judicial protection of the relevant rights and interests. In view of this, acts and decisions of public administration do not acquire the features of finality in the legal system even when they are adopted as a result of resolving a dispute between subordinate (subordinate) subjects. Thus, the distinction between administrative procedural and administrative procedural law is not only theoretical, but also of great practical importance, since it is through the mechanisms of administrative justice that final and independent control over the activities of public administration is ensured. This is especially relevant in the field of public procurement, where management decisions directly affect competition, the efficiency of the use of budget funds and the level of economic security of the state, which necessitates a thorough study of the system of judicial protection in relevant disputes. The purpose of the scientific article is to study the issues of implementing the system of judicial protection in disputes regarding public procurement as a factor of the economic security of the state.

3. The role of Judicial Protection in Reducing Corruption Risks as a Factor in Destabilizing the System of Economic Security of the State

The field of public procurement is traditionally one of the most vulnerable to corruption, because unscrupulous customers or participants may try to circumvent the procedures for personal gain. An effective appeal and judicial protection mechanism serves as a deterrent to such abuses. In particular, the introduction of the Prozorro electronic public procurement system and accessible appeal tools in Ukraine has dramatically increased the transparency of bidding. According to the National Agency for the Prevention of Corruption, the electronic procurement system has reduced opportunities for abuses and facilitates their detection by law enforcement, supervisory and judicial authorities (Corruption risks during public procurement under martial law, 2023). In other words, the open electronic format of tenders facilitates the detection of violations that can be corrected by applying to the Antimonopoly Committee (appeal body) or the court.

The possibility of judicial appeal of tender results forces customers to comply with the law, because the risk of annulment of an unlawful decision by the court makes corrupt agreements less attractive. If a bidder knows that in the event of discrimination or collusion, he can protect his rights through a complaint and a court, the temptation for officials to "play" the tender in favor of a favorite is significantly reduced. As noted in anti-corruption studies, effective and transparent

procurement procedures not only allow for rational spending of budget funds, but also strengthen trust on the part of citizens and donors (How do Ukrainian cities cope with transparency of budgets and procurement, 2023). Thus, judicial control and appeal mechanisms work preventively: knowing about the inevitability of control, procurement entities will more often act with integrity, which increases overall economic security and the efficiency of the use of public finances (Borysenko, 2023).

It is worth noting that in Ukraine, the main extrajudicial mechanism for operational appeal is the Antimonopoly Committee of Ukraine (hereinafter referred to as the AMC of Ukraine) as the body for appealing tender procedures (Corruption risks during public procurement under martial law, 2024). The decisions of the AMC of Ukraine are binding and may, for example, cancel an unlawful decision of the customer to reject a proposal or oblige to make changes to the tender documentation. This form of protection of the rights of participants is faster than the court, and it is usually the first place to turn to it. According to the results of the Prozorro system, most controversial issues are resolved at the stage of considering complaints in the AMC of Ukraine. However, the courts remain the highest instance of protection – firstly, the decisions of the AMC of Ukraine itself can be appealed by the customer or participant in court, and secondly, some disputes (for example, regarding already concluded contracts or compensation for damages) are resolved exclusively by the courts. Thus, judicial protection is an integral part of a holistic system of control over public procurement. The presence of effective judicial protection directly affects the country's investment attractiveness and the level of competition in public procurement. Foreign and domestic investors are more willing to participate in public tenders if they are confident that if their rights are violated, they will be able to obtain justice through an independent court. The right to appeal ensures a level playing field: even if the customer has biasedly rejected the offer of a bona fide company, such a participant has a chance to win the tender through a decision of the appeal body or court, which guarantees that the best offer will win, and not the one that was submitted through violations. Ukrainian procurement legislation contains detailed procedures for protecting the rights of participants, including the possibility of filing a complaint with the AMC of Ukraine with automatic suspension of the conclusion of the contract until the dispute is resolved. This mechanism has proven its effectiveness: the AMC of Ukraine as an appeal body is one of the most effective tools for protecting violated rights and legitimate interests of procurement participants (Corruption risks during public procurement under martial law, 2024). According to the generalized study, the vast majority of justified complaints of participants are satisfied. Thus, in 2022, out of 3,727 complaints accepted for consideration by the AMC of Ukraine, 3,046 complaints were fully or partially satisfied (about 80%) (Report on the results of the analysis of the annual report of the Ministry of Economy of Ukraine, 2023), which shows that the appeal system really works in the interests of business: thousands of procedures have been reviewed, discriminatory requirements have been canceled, unfairly rejected participants have renewed their chances of winning. It is significant that the amount of funds returned to participants as a result of satisfied complaints (about 60 million UAH) is a significant part of the fees they paid (87 million UAH) – a difference of ~26.7 million UAH – that is, most complaints were justified (AMCU briefing on the work of the Appeals Body in the 2nd quarter, 2023). Such statistics confirm the expediency of the appeal mechanism for protecting business rights and developing fair competition.

In addition to administrative appeals, bidders have the opportunity to file a lawsuit with the court – for example, to declare the decisions of the tender committee or even an already concluded contract invalid if they see a violation of the law. Judicial protection here plays a dual role. On the one hand, it guarantees the realization of the right to a fair hearing of the dispute by an independent body – a court, whose decisions are binding. On the other hand, the very existence of judicial control disciplines both customers and participants. Investors see that the state provides effective legal guarantees in public procurement – as a result, the level of trust in the market increases, more companies dare to enter state tenders, including foreign ones, which increases competition and the quality of offers. Thus, judicial protection of the rights of participants in procedures is a guarantee that companies' investments in preparing tender offers will not be wasted due to someone's illegal arbitrariness.

It is worth noting that an excessive number of litigations is also undesirable, as it delays the procurement process. Therefore, a balanced system of pre-trial settlement and judicial protection is optimal. In Ukraine, such a model has developed: first, an operational decision is given by the appeal body (AMC of Ukraine) within fifteen days, and in the absence of agreement, the parties can apply to court for a final assessment. Such a two-stage scheme ensures both speed and completeness of protection of rights. As a result, participants – investors receive confidence that their rights will be protected at each stage, which is an important element of investment security. The principles of transparency, accountability and impartiality in public procurement directly affect the efficiency of the use of public funds. When procurement is carried out openly, under public and judicial control, this guarantees rational pricing and

the proper quality of goods and services for the state. Instead, opaque procedures, information secrecy, and the lack of effective control lead to overpayments, the supply of low-quality products, and improper budget allocation – that is, direct losses of public finances and the undermining of economic security.

In addition, transparency and control of procurement are important for international partners. In post-war reconstruction, for example, donors and financial institutions pay attention to whether the country has independent judicial control over the spending of funds. If the judicial system is able to effectively prevent embezzlement and corruption in public procurement, this increases trust and willingness to invest. On the contrary, the lack of effective control can lead to the curtailment of aid and investments. Therefore, judicial protection in this area is of strategic importance for the economic security of the state, affecting both internal cost efficiency and external financial support.

Judicial protection in public procurement disputes is an important tool for ensuring transparency and legality in the use of budget funds and has a comprehensive impact on the efficiency of their distribution. First of all, judicial control makes it possible to identify and eliminate violations of procurement procedures. With independent judicial supervision, customers are deprived of the opportunity to conclude contracts without competition or with a derogation from the requirements of the law with impunity, since such transactions can be declared invalid or canceled by the court with the obligation to conduct a repeat procurement, which makes it impossible to misuse funds and actually insures the state budget against ineffective spending, which is confirmed by the judicial practice of Ukraine, in which contracts concluded in violation of tender procedures have been repeatedly declared invalid (Resolution of the Supreme Court, 2021).

At the same time, judicial protection contributes to the formation of fair competition and achieving the optimal procurement price. Awareness of the real possibility of appealing the customer's decisions stimulates a wider range of economic entities to participate in tenders, even if there are doubts about the transparency of the procedures. Increased competition, in turn, leads to a decrease in the cost of the procurement object and an increase in the quality of proposals, which allows the state to use financial resources more rationally. According to the results of Transparency International research, effective and transparent tender procedures directly affect cost savings and increase trust on the part of the community and donors (Digest of the Supreme Court case law on resolving disputes in the field of public procurement, 2023), which is of particular importance in conditions of limited budgetary possibilities.

In addition, judicial practice in public procurement disputes plays an important role in the formation of uniform rules of law enforcement and prevention of abuses. Decisions of courts, in particular the Supreme Court, contain legal positions on the status of customers, requirements for tender documentation, permissible limits for changing the essential terms of the contract and other key issues (Consideration of complaints in the field of public procurement: procedural skills for administrative tribunals, 2021). Such clarifications unify practice, reduce the level of legal uncertainty and narrow the space for manipulation. As a result, customers are aware in advance of the limits of permissible behavior, and participants in procedures clearly understand their rights and mechanisms for their protection, which makes the public procurement system more predictable, stable and cost-effective.

4. Comparative Analysis of Public Procurement Dispute Resolution: Judicial Practice of Ukraine and the EU

Ukraine, in reforming the public procurement system, has largely been guided by European Union standards. The concluded Association Agreement provides for the implementation of EU norms, in particular the procurement directives and the so-called Remedies Directives. These EU acts require Member States to provide effective and rapid procedures for appealing tender decisions so that participants can promptly protect their rights. As a result, most EU countries have specialized appeal bodies or the relevant powers are vested in courts (usually administrative or commercial courts).

The structure of the review mechanisms in the EU differs in some places. For example, in Germany, there are specialized bodies – the Review Offices, whose decisions can be further appealed to higher courts. In Poland, there is a National Appeal Chamber (KIO), an independent quasi-judicial body that examines complaints from suppliers. Its decisions can also be reviewed by the Court of Appeal. In contrast, in the United Kingdom (before Brexit) or the Netherlands, participants immediately turned to ordinary courts to challenge procurement – with courts often applying accelerated procedures, taking into account the short deadlines for tenders. Despite the different models, the commonality across the EU is that legal remedies must be effective: a complaint must suspend the conclusion of the contract until a decision is made, and the review body must take decisions quickly (within 10 to 45 days, depending on the country) (Consideration of complaints in the field of public procurement: procedural skills for administrative tribunals, 2021). In Ukraine, the model is similar to the Polish one: the initial consideration is a special commission, which is the AMC of Ukraine, and then a court; which corresponds to European practices and the requirements of EU Directives, which ensures the harmonization

of rules within the framework of integration into the common market.

It is interesting to compare the scale and effectiveness of appeals. In Ukraine, the number of complaints to the appeals body is traditionally very high due to the centralized role of the AMC of Ukraine and the low cost of filing a complaint (2-5 times lower than similar fees in the EU). Thus, in 2020, more than 11.5 thousand complaints were filed with the AMC of Ukraine, in 2021 - about 13 thousand (The number of complaints about public procurement last year increased to 13 thousand – AMCU, 2021). For comparison, in Poland (population ~38 million, procurement volume similar) in 2020, 3,545 appeals were filed with the KIO, and in 2021 – 3,811 appeals (Wachowska, 2021).

Thus, Ukrainian business appeals tender decisions much more often, which may indicate both the activity of protecting rights and a greater number of potential violations. At the same time, the effectiveness of appeals in Ukraine is higher: as noted, 80% of complaints are fully or partially satisfied, while in EU countries this figure is lower. For example, in the same Poland, usually about 20–30% of the total number of complaints considered are satisfied (the rest are rejected or remain without consideration) (Wachowska, 2021). One reason is that in the EU, complaints are often filed for more complex cases, and minor violations are filtered out. In Ukraine, businesses often appeal even minor formal shortcomings in tender documentation, which overloads the system.

For clarity, let's consider the dynamics of appeals regarding public procurement in Ukraine and in one of the EU countries (Poland) during the pre-COVID and pandemic periods (2020–2021). The data is presented in Table 1:

Table 1

Number of appeals against procurement procedures in Ukraine and Poland (2020–2021)

Year	Ukraine: complaints to the AMC of Ukraine (number)	Poland: Appeals to KIO (number)
2020	11 500	3545
2021	13 000	3811

Source: (Yalivets, 2021; Wachowska, 2021)

As the table shows, the volume of disputes is significantly higher in Ukraine, although in 2020–2021 there was also an increase in Poland. The situation changed dramatically in 2022 due to the war in Ukraine. Due to the introduction of special simplified procedures for the period of martial law and a general reduction in tenders, the number of complaints in Ukraine fell to 3,727 in 2022 (Report on the results of the analysis, 2023).

As for judicial practice, in Ukraine it is formed both at the level of local courts (economic and administrative, depending on the nature of the dispute), and at the level of the Supreme Court, which ensures unity of approaches. The Supreme Court of Ukraine in 2019–2023 has developed a significant array of decisions in the field of public procurement, which is systematized in a special digest (Digest of the Supreme Court case law on resolving disputes in the field of public procurement, 2023). It highlights typical issues: identifying customers, planning procurement, publishing information, requirements for tender documentation, grounds for rejecting offers, amending contracts, etc. For example, the Grand Chamber of the Supreme Court clarified that changing the contract price by more than 10% is not allowed without a new tender (decision in case No. 908/299/18) (Resolution of the Grand Chamber of the Supreme Court, 2020), and in another case confirmed the illegality of concluding additional agreements after the expiration of the purchase contract (Supreme Court in figures and facts, 2022). Such legal conclusions bring Ukrainian practice closer to European standards and serve as a reference point for lower courts and bidders.

In the European Union, the Court of Justice of the EU plays an important role in shaping practice, interpreting the provisions of the procurement directives and legal remedies in its decisions. Its decisions are binding on member states and are often cited by national courts in resolving disputes. An example is the case C-454/06 Pressetext, where the EU Court determined the criteria for the admissibility of changes to concluded contracts (whether they are new procurement). Similar approaches are currently being applied by Ukrainian courts, implementing EU norms.

Regarding the effectiveness of judicial protection, in Ukraine it is quite high for plaintiffs. In 2022, according to the information resource "Judiciary", Ukrainian courts considered 1,012 claims related to public procurement, opening proceedings for 908 of them (Kucherenko, 2023), which means that most claims met the requirements and were accepted for consideration. Although the exact statistics of satisfied claims in courts of general jurisdiction are not published separately, from the analysis of sample decisions it can be concluded that a significant part of disputes is resolved in favor of the complainants (participants or regulatory authorities). For example, the State Audit Service often challenges the results of monitoring in courts, and in about 27% of cases the courts side with the auditors, overturning the decisions of the customers (Yuzhanina, 2023). In the EU, the judicial stage is a rarer phenomenon: many issues are resolved at the pre-trial stage, and only the most complex cases reach the court. This can be explained both by the higher level of trust in the primary appeal bodies and by the significant legal costs in some countries, which deter companies from legal actions.

Summing up the comparison, it is worth noting: in the field of public procurement, Ukraine has made significant progress in approaching European practices of judicial protection. The Prozorro-AMK appeal system of Ukraine is considered one of the most successful anti-corruption reforms, and the judiciary is increasingly demonstrating its principled approach in protecting public interests and business rights. In the future, it is important to ensure the stability and independence of the judicial system so that the judicial control mechanism continues to fulfill its function as a guarantor of economic security.

3. Administrative appeal procedures in the field of public tenders and procurement in Ukraine

Administrative appeal procedures in the field of public procurement, by their legal nature, can be described as quasi-judicial, since they provide for the resolution of a dispute outside the jurisdiction of the court and are focused on pre-trial settlement of the conflict. Their purpose is to ensure the prompt consideration of the relevant categories of cases, as well as to reduce the burden on the judicial system. In introducing the administrative appeal procedure, the legislator proceeded from the fact that judicial proceedings, given the terms, procedural form and other features, are not always able to guarantee timely and effective consideration of disputes that arise within the framework of the modern model of public procurement. It is for these reasons that the function of the Authorized Appeal Body was retained under the Antimonopoly Committee of Ukraine and organizationally and technologically combined with the work of the electronic system "Prozorro".

At the same time, judicial control as a tool for external verification of decisions and actions in the field of procurement has not actually received full-fledged systemic integration with the electronic procurement infrastructure. The problematic nature of this situation is being highlighted, in particular, by practicing lawyers specializing in supporting public procurement procedures (Sulyma, 2019).

The problem of this situation is that judicial control over decisions that are adopted or implemented within the electronic procurement system often does not produce the expected effect due to the limited practical tools for its implementation in conditions of high automation of procedures. In particular, difficulties arise during the actual execution of court decisions to secure a claim, because the electronic bidding system works as an algorithmic mechanism with a predetermined logic of actions. Thus, in accordance with Article 29 of the Law of Ukraine "On Public Procurement", the evaluation of tender offers is carried out automatically by the electronic system based on the criteria and methodology established by the customer in the tender documentation, and in practice this is implemented, in particular, through the conduct of an electronic auction. Under such circumstances, the court's security measures may contradict the automated processes of the system, which complicates their operational implementation and, as a result, reduces the effectiveness of judicial control. The electronic procurement system automatically determines the date and time of the auction. In such a configuration, the customer actually has no effective leverage to influence the algorithmic decisions of the system, and therefore is objectively unable to execute the court's decision to secure the claim by stopping or postponing the start of the auction. Accordingly, the auction may take place even with a court decision, which can cast doubt on the legality of further procedural actions and cause additional legal risks. Due to the lack of technical solutions in the Prozorro functionality for the quick execution of decisions to secure the claim, the probability of resource and time losses for the customer increases. In essence, the electronic system does not provide special tools (conditional "buttons") for the prompt execution of court decisions, which complicates the timely restoration of the violated rights of the plaintiffs.

An illustrative example in this sense is the example of case No. 916/3418/19, considered by the Commercial Court of the Odessa Region on March 16, 2020. Within the framework of the dispute, the plaintiff requested to declare the customer's decision illegal and to cancel it, to recognize the plaintiff as the winner of the procurement procedure and to recognize the contract as concluded within the framework of the procurement, which concerned the construction of a general practice family medicine clinic in the village of Prymorske. The argumentation of the claim was based on the denial of the legality of the rejection of the plaintiff's tender offer and the cancellation of the procurement procedure, as well as on the requirement to oblige the customer to conclude a contract with the plaintiff as the winner. The court satisfied the stated requirements and imposed on the defendant the obligation to cancel the relevant decisions and conclude a contract with the plaintiff. As of 08.07.2020, the said decision entered into legal force and was not subject to appellate review. At the same time, according to data posted on the official web portal of the Authorized Body, the judicial act was not actually implemented in practice: the procurement procedure was canceled, and the violated rights and legitimate interests of the plaintiff were never restored (UNCITRAL, 1994).

It follows from the above that filing a complaint within the administrative appeal mechanism to the Antimonopoly Committee of Ukraine potentially makes it possible to reduce the manifestations of the problem of the conditional "absence of a button", since the decisions of the appeal body are procedurally and technologically integrated into the functioning of the

electronic procurement system. The general principles and key requirements for the appeal procedure are enshrined in Article 18 of the Law of Ukraine "On Public Procurement". At the same time, the placement of this norm in Section III of the Law ("General Conditions for Procurement") indicates its general, framework nature and the extension of the relevant provisions to typical violations that arise in the process of conducting tender procedures. At the same time, the administrative appeal procedure in the field of public procurement cannot be considered as a universal means of protection for all entities involved in the procurement infrastructure. In particular, it does not cover cases of protecting the rights of operators of electronic platforms in the event of their possible violation by the Ministry of Economy, Environment and Agriculture of Ukraine during the implementation of authorization procedures. In such legal relations, the appropriate method of protection, as a rule, is an appeal to the court.

The purpose of an administrative appeal in the field of public procurement is to ensure the protection of violated rights and legitimate interests of participants or potential participants in procurement from unlawful decisions, actions or inaction of customers. Within the framework of the relevant regulation, the legislator has identified a special category of persons who have the right to initiate the appeal procedure. Thus, Part 2 of Article 18 of the Law of Ukraine "On Public Procurement" determines that an appeal to the appeal body is carried out by submitting a complaint by the subject of the appeal. At the same time, the subject of the appeal within the meaning of the current legislation is an individual or legal entity that has applied to the appeal body in order to protect its rights and legally protected interests in connection with a decision, action or inaction of the customer that contradicts the legislation in the field of public procurement and has led to a violation of the rights or legitimate interests of such a person.

In actual terms, the subject of the appeal is most often the person who submitted a tender offer to participate in one of the competitive procurement procedures. At the same time, in the case of the application of the negotiated procedure, such a subject may also be a person who objectively could claim to conclude a contract with the customer, but suffered a violation of his rights or legitimate interests precisely as a result of the use of this procedure. Therefore, the administrative appeal mechanism covers situations in which the procurement, due to the subject, expected cost or other legally significant features, must be carried out using the electronic procurement system.

Administrative appeal in the field of public procurement has a staged structure and is implemented through a sequence of interconnected stages. The initiation stage (first stage) begins with the submission (placement) of a complaint by the subject of the appeal in the electronic procurement system. At the same time, the terms for exercising the right to appeal are differentiated: they depend on at what stage of the procurement process, in the complainant's opinion, his rights or legitimate interests were violated.

Thus, complaints concerning the provisions of the tender documentation or decisions, actions or inaction of the customer that took place before the deadline for submitting tender offers can be filed from the moment of publication of the announcement on the relevant competitive procurement procedure, but no later than four days before the date set for submitting tender offers. For example: if in open tenders the minimum deadline for submitting tender offers is 15 days from the date of publication of the announcement in the electronic procurement system, then the complaint must be filed no later than four days before the end of this period. At the same time, in practical terms, it is worth considering the specifics of calculating the deadline: the "fourth day" as the formally last day for submitting a complaint actually expires at 23:59 of the previous calendar day, which makes it advisable to focus on submitting a complaint approximately five days before the end of the acceptance of proposals (Instructions, 2023).

Complaints concerning the decisions, actions or inaction of the customer, made after the consideration of tender proposals at the pre-qualification stage and before the electronic auction (in particular in open tender procedures or competitive dialogue with publication in English), in accordance with the requirements of the legislation, are submitted within five days from the moment of publication in the electronic procurement system of the protocol of consideration of tender proposals. At the same time, linking the beginning of the appeal period to the fact of publication of such a protocol in the electronic system creates potential conditions for abuse by customers. The essence of the relevant manipulative practices is that customers, having the technical ability to independently form and publish protocols of consideration of proposals, may deliberately not complete individual actions, which for the electronic system are confirmation of the actual publication of the document. In particular, the corresponding function is not activated in the "decision" field opposite a specific participant, as a result of which the system does not record the protocol as published. Under such circumstances, the participant is objectively deprived of the opportunity to file a complaint, since the protocol is formally absent for the system, and the appeal period is considered not to have begun.

After the actual expiration of the five-day period provided for by law for filing a complaint, the customer performs the appropriate technical action, as a result of which the protocol is formally considered to be published, and the participant has the right to appeal.

However, the implementation of this right becomes ineffective, since the permanent administrative board of the appeal body leaves such complaints without consideration on the grounds of missing the appeal period. At the same time, for the Board, the moment of the beginning of the period is the date of publication of the protocol specified by law, and not the actual moment of the customer's performance of the relevant technical operation in the system.

The solution to the outlined problem is possible in two main ways: first, by amending the legislation in order to clarify the moment of the beginning of the appeal period, or, secondly, by improving the algorithms of the functioning of the electronic procurement system software. From a practical point of view, the second approach seems to be more operational, effective and economically justified. Given that the relevant legislative amendments were not enshrined in the new version of the Law of Ukraine "On Public Procurement", there are reasonable grounds to predict that the modernization of the technical algorithms of the electronic procurement system will become the key direction in overcoming the above-mentioned problem (Tkachenko, 2009).

According to the updated version of the Law of Ukraine "On Public Procurement", complaints about the decision, actions or inaction of the customer that took place after the evaluation of tender offers (in particular, after conducting an electronic auction) are filed within ten days from the moment when the subject of the appeal learned or, under the circumstances of the case, should have learned about the violation of his rights or legitimate interests as a result of the relevant decision, action or inaction. At the same time, the law establishes an imperative restriction: such a complaint can be filed only before the day of conclusion of the procurement contract. Such a transformation creates certain risks in law enforcement, because, unlike the previous approach, the "moment of awareness" is not always subject to unambiguous and objective fixation. This, in turn, may create space for unfair behavior of individual participants, who are potentially capable of artificially expanding the time limits for exercising the right to appeal, referring to a later "actual" finding out about the violation. Similar reservations regarding the practical consequences of this legislative construction are expressed, in particular, by O. Savchenko (Savchenko, 2020).

At the same time, such a change in wording is not accidental and was due to the presence of a specific problem of law enforcement, which the Antimonopoly Committee of Ukraine drew attention to. In particular, the previous version of the Law, which linked the start of the appeal period exclusively to the publication of a notice of intention to conclude a contract, actually narrowed the possibilities of participants to protect their rights in situations where the customer did not determine the winner after the end of the auction and, as a result, did not place the relevant notice. Under such conditions, participants objectively did not have procedural prerequisites for filing a complaint, in particular regarding the appeal of the decision to cancel the procurement procedure or other decisions, actions or inaction of the customer that could violate their rights and legitimate interests (Falko, 2012).

The Law of Ukraine "On Amendments to the Law of Ukraine "On Public Procurement" and Some Other Legislative Acts of Ukraine on Improving Public Procurement" dated September 19, 2019 No. 114-IX significantly revised the approach to charging a fee for filing a complaint, in particular, changed the corresponding algorithm for its payment. As S. M. Panaiotidi pointed out, at the initial stage of the functioning of the updated system, one of the most common mistakes of complainants was the lack of payment for filing a complaint. Thus, since the launch of the Prozorro system, the appeal body has received 92 complaints, of which only 24 were filed with the payment of the appropriate fee, which indicated an insufficient level of awareness of the subjects of the appeal regarding the obligation of such payment (Panaiotidi, 2016).

Currently, the problem has actually been eliminated, since its solution was provided at the software and technical level: the electronic procurement system does not send a complaint to the appeal body without confirmation of payment of the appropriate fee.

In practical terms, as noted by O. Danylyuk, this leads to several possible models of behavior of the subject of the appeal. One of the common algorithms is that the complainant first downloads the text of the complaint through the functionality of the electronic platform and forms it in the draft status. After that, the established fee for filing a complaint is paid through the electronic system "Prozorro" to special accounts of the state enterprise "Prozorro". In accordance with the Resolution of the Cabinet of Ministers of Ukraine "On establishing the amount of the fee for filing a complaint and approving the Procedure for paying the fee for filing a complaint to the appeal body through the electronic procurement system and its return to the subject of the appeal" dated 22.04.2020 No. 292, it is the State Enterprise "Prozorro" that is authorized to ensure the acceptance and accounting of such payments. In the future, the enterprise checks the fact of crediting the funds, and only after confirmation of receipt of payment can the complaint be submitted for consideration by the appeal body (On establishing the amount, 2020).

Provided that all established requirements are met, the complaint in the electronic procurement system is transferred from the "draft" status to the "active" status and is automatically transferred for consideration

to the Antimonopoly Committee of Ukraine as the appeal body.

Along with this, an alternative procedure for filing a complaint is also used in practice, which provides for a different sequence of actions by the subject of the appeal. First, on the complaint formation page, it is necessary to obtain (download) payment details. Second, the complainant pays the established fee for filing a complaint through online banking with subsequent saving of the payment document. Third, after payment, the subject of the appeal re-enters the complaint submission page, downloads a payment order and awaits confirmation of the transfer of funds from the state enterprise "Prozorro". Only after receiving such confirmation is the text of the complaint directly uploaded to the electronic system.

At the same time, it is fundamentally important that confirmation of payment by SE "Prozorro" and submission (uploading) of the complaint into the electronic system take place within one calendar day, since with a different approach, the Antimonopoly Committee of Ukraine may refuse to accept such a complaint for consideration (Danyliuk, 2019).

After the complaint is entered into the register together with the attached materials and the generated registration card, it is automatically sent to the appeal body and the customer. At the same time, the electronic procurement system, in the event of a complaint being filed with the appeal body, triggers a mechanism for automatically suspending the relevant procedural actions. In particular, the start of the electronic auction is blocked, and it also becomes impossible to publish the customer's decisions to cancel the tender or recognize it as not having taken place, cancel the negotiated procurement procedure, conclude a procurement contract and publish a report on the results of the procurement. Such a tool is designed to ensure the reality and effectiveness of the administrative appeal and prevent irreversible actions from being taken until the dispute is resolved by the appeal body.

The stage of administrative consideration of the complaint begins from the moment the complaint is entered into the register of complaints in the electronic procurement system. From this time on, the appeal body is obliged to adopt and publish in the electronic system one of the procedural decisions provided for by law within three working days, namely:

– a decision to accept the complaint for consideration, indicating the date, time and place of its consideration;
– a reasoned decision to leave the complaint without consideration;
– a decision to terminate the consideration of the complaint.

The current version of the Law of Ukraine "On Public Procurement" has significantly expanded the procedural powers of the appeal body, in particular, it has established the right of the permanent administrative board to request documents, information and materials necessary for a comprehensive and objective consideration of the complaint. Customers, procurement participants, state control bodies, the Ministry of Economy, Environment and Agriculture of Ukraine and other persons are obliged to provide such information in electronic form through the procurement system within a period not exceeding three working days from the moment of receipt of the request. This design is aimed at increasing the evidentiary efficiency of the proceedings and preventing delays in consideration.

In general, the appeal mechanism in the field of public procurement has all the features of an administrative procedure: a clearly regulated procedure, a specially authorized body, a formalized result in the form of an administrative act and the possibility of judicial control. At the same time, it is distinguished by a high level of technological integration with the electronic system "Prozorro", within which all document circulation is carried out and all stages of the proceedings are recorded.

Structurally, an administrative appeal includes three stages: filing a complaint, its consideration and execution of the decision. Each of these stages is closely related to the electronic procurement system and ensures transparency and controllability of the procedure.

However, the current model of administrative appeal is not without significant shortcomings. In particular, reducing the time limits for considering complaints creates risks of violating the rights of interested parties, reducing the quality of decisions and possible financial losses for the state. This state of legal regulation requires urgent regulatory adjustment by amending the Law of Ukraine "On Public Procurement" in order to improve the administrative appeal procedure and increase its efficiency.

6. Conclusions

The conducted study gives grounds to assert that judicial protection in disputes regarding public procurement is not only an element of the mechanism for guaranteeing the rights of participants in procedures, but also an important factor in ensuring the economic security of the state. Its significance goes beyond a purely procedural instrument, as it directly affects the transparency of the use of budget funds, the level of business trust in state institutions and the investment attractiveness of the country as a whole.

Judicial control in the field of public procurement performs primarily a preventive function, restraining potential corruption and abuse by customers and bidders. Awareness of the inevitability of judicial review encourages subjects of procurement legal relations to comply with the requirements of the legislation, which contributes to the formation of fair competition and

ensures the rational use of public finances. At the same time, judicial protection also performs a restorative function, allowing to eliminate the consequences of unlawful decisions and restore the violated rights of participants in procedures.

A comparative analysis of Ukrainian and European practice indicates a gradual approximation of the national appeal system to the standards of the European Union. Ukraine has formed an effective model of combining administrative and judicial protection, which generally meets the requirements of EU directives on legal remedies in the field of procurement. At the same time, the national system is characterized by a significantly higher intensity of appeals, which on the one hand indicates the activity of business in protecting its rights, and on the other hand indicates the presence of systemic problems in the practice of procurement.

The problem of limited integration of judicial control with the electronic procurement system requires special attention, which reduces the effectiveness of the execution of court decisions and creates risks of formal, rather than real, restoration of violated rights. In this context, administrative appeal procedures within the Antimonopoly Committee of Ukraine demonstrate a higher level of practical effectiveness due to technological integration with the Prozorro system, however, they cannot completely replace judicial protection as the final guarantee of legality.

Therefore, judicial protection in public procurement disputes should be considered as a system-forming element of the economic security mechanism, ensuring a balance between the efficiency of administrative procedures and the finality of judicial control. Further improvement of this system should be aimed at increasing the efficiency of the execution of court decisions, optimizing the terms of consideration of cases, as well as strengthening procedural interaction between courts and the electronic procurement system. Only under such conditions will judicial protection be able to fully fulfill its strategic function as a guarantor of legality, transparency and economic stability in the field of public procurement.

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