

The cover features a person standing on a dark rock in a snowy, mountainous landscape under a night sky with a vibrant green aurora borealis. The background is dark with stars and streaks of light. Overlaid on the top left are several diagonal bands in shades of teal and brown. The title 'REVISTA INCLUSIONES' is centered in large, white, bold, sans-serif capital letters.

# REVISTA INCLUSIONES

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## Abstract

This paper analyzes legal liability for violations of the law on public procurement. We have studied the main monitoring activities conducted by the competition authority during scheduled and unscheduled inspections of procurement procedures.

## Keywords

State orders – Legal liability for violation of the law on public procurement – State needs

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## Introduction

Nowadays, law violations in public procurement are one of the factors accounting for the economic situation.

This topic seems worthy of studying since public procurement orders are the basis for addressing the state needs and enhancing the social and economic growth of the country. Under market conditions, the state functions as one of the consumers of different goods and it influences the demand making it a regulatory instrument that impacts the structure of the economy. The market for public procurement is becoming a crucial factor in the social and economic development of the country while the system for public procurement orders is one of the factors for the successful functioning of all public spheres. The system of public procurement enhances the interaction between public authorities, public corporations, and businesses. Any law violation causes significant harm to social and economic interests while impunity breeds crime in this sphere<sup>1</sup>.

## Materials and Methods

In this research, we used the results of the Federal Antimonopoly Service's control activities during 2018. In total, there were 5066 control activities, with 129 as scheduled and 4937 as unscheduled. The unscheduled control activities considered public procurement at the federal level (1581), the level of the subjects of the Russian Federation (1803), and at the municipal level (1555). We have also conducted a content analysis of judicial materials and used its results to justify our position.

## Results Analysis

In scheduled and unscheduled control activities conducted according to the Law on the contract system and the Law on procurement, we have studied 18532 procurement procedures. As a result, law violations in 5784 procedures (31,2%) were discovered. On the results of control activities, 1888 orders to eliminate infractions were issued on the contract system in public procurement.

In 2018, the Federal Antimonopoly Service initiated 21194 cases on administrative offenses on the contract system in public procurement. There were 17784 orders to impose administrative fines for the total sum of 277.788,67 thousand rubles. In the reporting period, the Federal Antimonopoly Service recovered 176.601,42 thousand rubles. In 2017, the Federal Antimonopoly Service initiated 17347 cases on administrative offenses and there were 14710 orders to impose administrative fines for the total sum of 210.142,23 thousand rubles, with 144.383,68 thousand rubles recovered.

During the reporting period in 2018, the majority of cases (7244) were commenced under Art. 7.30 Para. 4.2 of the Code of Administrative Offenses (hereinafter – the CoAO) for approving the documentation on procurement that did not comply with the Law on the contract system for procurement, with 6575 cases receiving orders for fines to be paid. 4625

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<sup>1</sup> V. V. Pushkarev, "Crimes in the Military-Industrial Complex (MIC)", *International Journal of Recent Technology and Engineering* Vol: 8 num 3 (2019): 7950-7952 y V. V. Pushkarev, "Criminal Prosecution and Qualification of Cybercrime in the Digital Economy", *Journal of Advanced Research in Dynamical and Control Systems* Vol: 11 num 8 (2019): 2563 2566



cases were initiated according to Art. 7.30 Para. 2 of the CoAO, i.e. for violating the rules for choosing the participants of procurement. In 3782 cases there were orders to impose administrative fines.

In this way, the main type of legal liability for law violations in public procurement is administrative responsibility.

It is important to address Russian jurisprudence in the field of procurement including making, changing, and breaking state and municipal contracts as well as their performance and responsibility for non-performance (or improper performance). We will address several examples from court cases on law violations in procurement and administrative liability for the contractor.

Firstly, it is important to mention disputes that appear when the contractor specifies characteristics of goods in procurement documents, e.g. specifying package type in procuring medical drugs. Antimonopoly authorities claim these actions to be law violations leading to administrative liability according to Art. 7.30 of the CoAO. This type of law violation incurs an administrative fine from 30.000 to 100.000 rub.

Meanwhile, examples from court cases show that if the contractor provides enough sufficient grounds to prove that specifying characteristics stems from the specific nature of procured goods (or the activity of the organization), then the regulation and decision of the antimonopoly authority is declared to be void and should be revoked (Case № A06-7356/2014)<sup>2</sup>.

Secondly, there is another category of court cases formed by disputes on performing, changing, or terminating the state contract. In reality, there are difficulties in finishing procurement in the time-frame stated in the documents. That is why the sides make additional agreements that the court deems to be illegal.

For example, the contractor and the company signed a construction contract. After a certain period, the company declared that it was impossible to finish construction by the time stated in the public contract and procurement documents due to the lack of productive capacity. To complete a public contract, the company suggested signing an additional agreement on changing the time-frame of the contract. The contractor took legal action to terminate the contract and to add the company to the blacklist of suppliers. The court upheld the contractor's claim since Art. 95 Para. 1 of the Law on contract system does not provide for the temporary inability of the perpetrator to fulfill the obligation to be the reason to change the terms of the contract. The company had to pay fines and pay damages to the contractor (Case № A06-7640/2015)<sup>3</sup>.

Thirdly, another group of disputes relates to the delivery of goods, providing service or work without a signed public contract.

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<sup>2</sup> Decision of the arbitral tribunal of the Astrakhan region in the case A06-7356/2014 on February 20, 2014.

<sup>3</sup> Decision of the arbitral tribunal of the Astrakhan region in the case A06-7640/2015 on September 2, 2015.

For instance, after competitive bidding, the company signed a contract with a public health institution for providing medical service. The time-frame of the contract covered the period “from signing the contract till April 22, 2015”. On April 30, 2015, through public auction, the sides signed a new electronic contract. For eight days the company continued to provide service without the new public contract and took legal action to recover the cost of provided service. The first instance court, as well as the appeal court, rejected the claims since the service was provided without a public contract on the period of the dispute. The arbitral tribunal canceled the court acts of the lower courts on the following grounds.

According to Art. 19 Para. 2 of the Federal Act on November 21, 2011 №323 “On public health care”, everyone has the right to free medical assistance as well as to paid medical and other services including voluntary health insurance agreements.

The medical assistance provided by the aforementioned company was characterized as vital and could not be terminated before the end of treatment.

The contractor’s inaction (failure to assign public order while there was an annual procurement plan approved by the public contractor) cannot act as a reason to terminate or suspend the performance of functions important for social and governmental stability.

Thus, the contractor was held administratively liable according to Art. 7.29.3 on law violations in the contract system for procurement planning with a fine from 20.000 to 50.000 rub (Case № A06-3060/2015)<sup>4</sup>.

Furthermore, another category of court cases is formed by the issues on ensuring requests under the competitive bidding and ensuring the performance of the contract.

The company that took part in the competitive bidding and took the second place filed a claim since that the company that took the first place provided a bank guarantee which was not in the list of bank guarantees to ensure the performance of the contract. According to Art. 96 Para. 5 of the Law on contract system, due to these actions the auction winner avoided signing the contract which made the contract invalid.

The court of the first instance rejected the claim and stated that in spite of the contractor’s failure to check the aforementioned bank guarantee, the contractor suggested that the winner provide a bank guarantee that complied with the norms of the contract system. However, the arbitral tribunal canceled the decision of the lower court since such actions of the contractor were the violation of law prohibition stated in Art. 17 Part 1 Para. 2 of the Competition Law. According to Art. 17 Para. 4 of the Competition Law and Art. 16 Para. 2 of the CC, the bidding and the resulting contract were invalid (Case № A06-7238/2015)<sup>5</sup>.

In addition, there are disputes that concern the performance of the public contract.

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<sup>4</sup> Decision of the arbitral tribunal of the Astrakhan region in the case A06-7328/2015 on February 20, 2014.

<sup>5</sup> Decision of the arbitral tribunal of the Astrakhan region in the case A06-7328/2015 on February 20, 2014.

For instance, if there is only one request for participating in competitive bidding and the participant's characteristics comply with the demands, it is possible to sign a contract with an only supplier.

It is necessary to state the amount of fine in the contract draft according to the Government decree on November 25, 2013 №1063 "On approval of the Rules for the amount of fine for the improper performance of the contract obligations by contractor or supplier".

In the contract draft, the company did not specify the amount of the fine. Consequently, the antimonopoly authority issued the order to modify the contract draft so that it complied with the regulations and to subject the contractor to administrative liability according to Art. 7.32 of the CoAO (the administrative fine on officials equal to 1% of the initial (maximum) sum of the contract but not more than 30.000 rub). The first instance court found no discrepancy between the antimonopoly authority's order and the legislation, and the case was dismissed.

The arbitral tribunal of the region canceled the aforementioned judicial acts and claimed the antimonopoly authority's order to be invalid since the amount of fines should be represented as a fixed sum. Nevertheless, there is no notion of "fixed sum" in the legislation and that enables the contractor to set the amount of fines in percentage terms without exceeding limits stated in the Government decree №1063.

Consequently, the contractor could not be found to violate Art. 34 Para. 4,8 of the Law on the contract system, and the antimonopoly authority's order was declared invalid (Case № A06-2154/2015)<sup>6</sup>.

Finally, one of the most important issues in jurisprudence in procurement are the cases on suppliers, namely those who evade signing the contract.

The main reason to declare that the supplier has evaded signing the contract is a failure to perform the contract timely and properly.

The company took legal action to the arbitral tribunal to declare invalid the legal act ordered by the antimonopoly authority on the company's evasion from signing the contract and adding the company to the blacklist.

In the explanatory notes, the company stated that after winning the bidding, they tried to inform the contractor about a mistake in transferring the money to the contractor's bank account (there was a discrepancy of 971 rub). After receiving the notice from the contractor on the lack of money, the company ensured that the shortfall was transferred during one banking day. Evidently, the company demonstrated a conscientious attitude towards fulfilling its obligations. Moreover, at the time of the online auction, the company proved having enough goods to meet the requirements of the contractor.

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<sup>6</sup> Decision of the arbitral tribunal of the Astrakhan region in the case A06-2154/2015 on February 20, 2014.

Thus, the arbitral tribunal concluded that though there was a breach of obligation, there still was no intention to evade the contract fulfillment so the company was not added to the blacklist (Case № A06-10381/2014)<sup>7</sup>.

## Conclusions

The main type of legal liability for law violations in public procurement is administrative responsibility. The most widespread type of penalty is the administrative fine on officials and legal entities.

## References

Decision of the arbitral tribunal of the Astrakhan region in the case A06-7356/2014 on February 20, 2014.

Decision of the arbitral tribunal of the Astrakhan region in the case A06-7640/2015 on September 2, 2015.

Decision of the arbitral tribunal of the Astrakhan region in the case A06-7328/2015 on February 20, 2014.

Decision of the arbitral tribunal of the Astrakhan region in the case A06-2154/2015 on February 20, 2014.

Decision of the arbitral tribunal of the Astrakhan region in the case A06-10381/2014 on May 20, 2015.

Pushkarev, V. V. "Crimes in the Military-Industrial Complex (MIC)". International Journal of Recent Technology and Engineering Vol: 8 num 3 (2019): 7950-7952.

Pushkarev, V. V. "Criminal Prosecution and Qualification of Cybercrime in the Digital Economy". Journal of Advanced Research in Dynamical and Control Systems Vol: 11 num 8 (2019): 2563-2566.

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<sup>7</sup> Decision of the arbitral tribunal of the Astrakhan region in the case A06-10381/2014 on May 20, 2015.