

PUBLIC CONTROL IN PROCUREMENT IN RUSSIA - COMMON CAUSE OR INHERITANCE INDIFFERENT

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Abstract: *The article aims to study the approaches to the organization and direction of one of the forms of social control in Russia - public control of public procurement. The article addressed the question of what kinds of subjects of public scrutiny has the highest current efficiency and the capacity to effectively meet the challenges of public control of public procurement. The article summarizes the data on the state of civic engagement as a factor that ensures the consistency and effectiveness of social control in the field of public procurement.*

Keywords: *Public control, public procurement, civic engagement, public associations.*

JEL classifications: *H50*

INTRODUCTION

The current legislation of Russia provides a mechanism for fixing and the implementation of the right to exercise public control over observance of the legislation of the Russian Federation and other normative legal acts of contract system in procurement. This kind of public control settled in accordance with the Federal Law of 05.04.2013 ¹ 44-FZ "About contract system in the procurement of goods, works and services for state and municipal needs", and corresponds to the related legislative acts. Citizens, public associations and associations of legal entities (associations) are entitled to realize the function of public control. Raises several questions. The first question is: which of these types of entities has the highest effectiveness for the implementation of the current functions public control? The second is: which of these types of entities has the greatest potential to meet the challenges public control - separate civic initiative, a public association or group of citizen's associative association of legal entities?

MATERIALS AND METHODS

To answer the first question it is expedient to analyze the activity of the activities of these entities in all areas public control: public scrutiny, public debate, and

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public control over the placement of procurement. For the latter, characterized by the largest number of destinations formalized data on which you can judge the activity of each subject. This is the data reported by the FAS Russia and the All Statistics official website.

Monitoring data of public opinion, the results of public discussion of draft laws, ratings, reports advisory bodies with public participation, data thematic discussions, publications on the Internet, data requests to the executive authorities, data on attendance themed events (for example, the Forum "State Order"), data on the publication activity and other topics can be used to assess the degree of activity of subjects in the direction of the public initiative. However, information from different sources cannot be reduced to a common denominator in order to allocate a share for each subject of public scrutiny.

On the degree of activity of subjects of public discussion in the direction of procurement can also be judged according to statistics of nationwide official website, however, distribute the available data between entities is not possible for the following reasons. Customer does not spread on the site documents (protocols) public discussion of the first stage of the procedure, indicating the public. Next, nationwide official website contains information on the total number of registered users who have access to the functions of public discussion on the second stage of the procedure. However, the user profile (it belongs to the activity of public organizations, for example) is not specified, which also allows you to distribute the number of users between the subjects public control. It turns out that at the moment for the purpose of analysis only promising direction is the public control over the placement of procurement.

A complaint against the customer (operator of an electronic site) is the most advanced and promising tool of social control in respect of procurement. As a process, filing a complaint represents interaction public controllers (participant's procurement) with the competent supervisory authorities in the area of procurement. FAS Russia is working on complaints and unscheduled inspections of the organization of the customer. The results of this work on the basis of 2013 were as follows: 49 723 complaints filed, of which 72% - considered on their merits and 29% - found to be justified. How can we interpret these data?

First, a high percentage of complaints in essence, in fact, demonstrates the quality of public claims supervisors (members of procurement) to violations committed by government customers and operators of electronic platforms. As a result, on each of the complaints (of 35801 complaints) has been audited. It should also be considered a significant result, given that in 2013 the FAS just spent 9048 audits of the customer (not including unscheduled checks when dealing with complaints).

Second, according to the results of the control register on the site was carried out unscheduled inspections 37130 (base - examination of the application). If we

compare the results of the planned (3116 audits) and unplanned (2312 audits) audits, filing of a complaint is the most effective tool of institutional control. While in 96% of cases the complaint was submitted to the bodies of the FAS, which is primarily due to the timing of the complaint record. FAS authorities are considering complaint on its merits within five working days from the day following the day of receipt of the complaint, in contrast to the general order of consideration of citizens (in accordance with claim 1. Article 12 of the Federal Law № 59-FZ term review of the written request is thirty days from the date of registration).

Third, FAS checked in 2013 94851 purchase, revealed 15% of them are violations of the law. These verifications carried out under the jurisdiction of the FAS and were not initiated any public inspectors nor participants procurement. If we take into account that according to the site for 2013 was taken 2,457,902 purchase (in the status of completed and canceled), while FAS checked only 94851 purchase - that control covered only about 4%. If we extend the rate of violations (15% of total purchases verified) on total completed over 2013 purchases (that is 2,425,229 procurement), the number of purchases with undetected violations of the law is 363784 procurement. In fact, this number expresses the untapped potential of public control over the placement of procurement.

Fourth, according to the registry of complaints on the national official website for 2013 of 41,957 complaints (considered essentially[1]) was issued an order to eliminate violations or canceling procurement in 42% of cases (17541 complaint). This is a good result the validity of claims. But even if we assume that 100% canceled by order of the procurement regulatory bodies have been canceled as a result of the complaint on the grounds of verification, compared to the total number of outstanding procurement result of public control over the placement of procurement is very insignificant. Even if we add to this the value of procurement for which no injunction was issued on the abolition of procurement, but about of the elimination of violations the effect of which allows the customer to complete the purchase, the effectiveness of public control in the total volume of purchases will not change significantly. This indicator can be calculated approximately as for single purchase may be filed several complaints. But even if we assume that one complaint corresponds to one purchase, the total number of purchases posted for 2013 (2,457,902 procurement), the share of purchases on which the complaint was filed (41,957 complaints) is only 1.7%. This figure should not be interpreted as a high level of professionalism and customer especially as the absence of corruption risks in procurement practices, taking into account the rate of detection of violations of the supervisory bodies (15% of the number of inspections). More obvious interpretation of the figure as unrealized potential public procurement control over placement.

Thus, the results of the function public control by filing complaints against actions (inaction) of the customer or the operator of an electronic site are rather

modest even insignificant in the total outstanding purchases. It should be borne in mind that the person who filed the complaint, may be as a participant in procurement and public controller. For the purpose of our research, this fact is important, because essentially, whose interest is the subject public control - a personal, limited representation of circulation (complaint) as a member of placement of purchase, rights have been violated, or the public interest consists in increasing the professionalism of customers and preventing corruption risks in procurement. Therefore, from the analysis should exclude complaints filed procurement participants that protect their own interests and do not seek to fully implement the function of public control over the placement of procurement.

The group of subjects should be identified, public organizations and associations of legal entities whose activities are characterized by the following features:

1. Subject is not party procurement, in respect of which he complains.
2. Scale of operation covers the entire territory of the state, there is no concentration (present minor concentration) on the basis of "filing of a complaint based on the location of the subject."
3. Nature of the subject does not match (corresponding essential) profile (subject) complained of procurement.

Source of information for a sample is the data register complaints nationwide official website for 2013, the following query parameters:

- procurement options - name purchases, subject complaint, name of considering the appeal does not matter;
- date of receipt of the complaint - from 01.01.2013 to 31.12.2013;
- count only from accepted for review and consideration of the complaint;
- Take into account the following types of decisions on the complaint: found to be justified; found to be justified in part; recognized as unfounded; beyond the competence of supervisory authority in procurement; revoked.

Sample according to the registry of complaints on the national official website for 2013 showed that the subjects of public control of the total number of complaints considered (45,418 complaints) 1.1% were filed by public organizations, 0% - citizens, 0.02% - public associations. These data show how low is the involvement of stakeholders outside public control in the process of placing public procurement. Hence the conclusion that at this stage of social control is not systemically important factor in the development of the contract system in Russia. Practice of implementing the functions public control does not extend beyond individual complaints to protect the violated rights and interests of the individual participant's procurement.

If public control differentiates entities filing the complaint to regulatory authorities in the procurement in 2013, the degree of activity, obtain the following information (Figure 1, 2).

Figure 1: Practice complaints public organizations to regulatory authorities

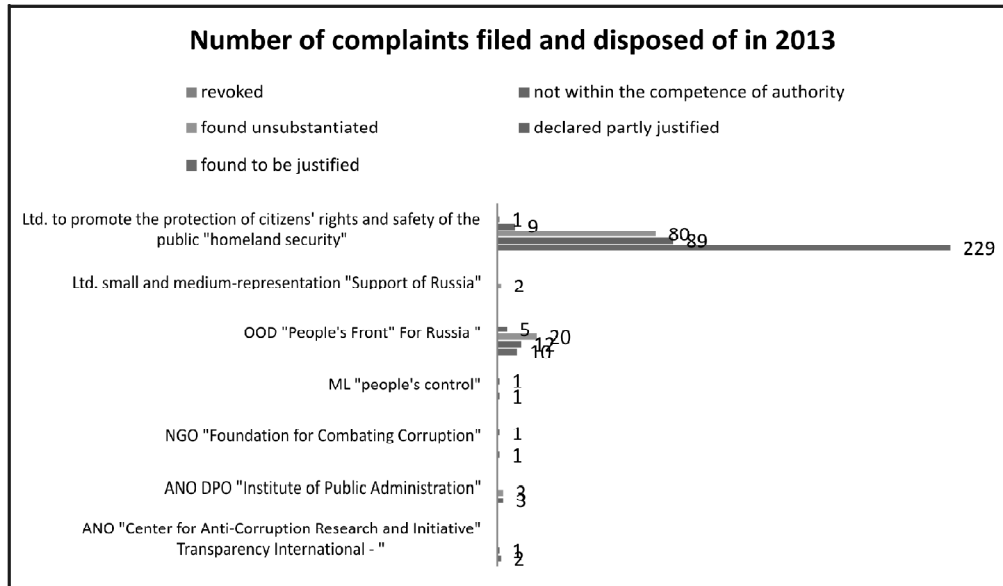
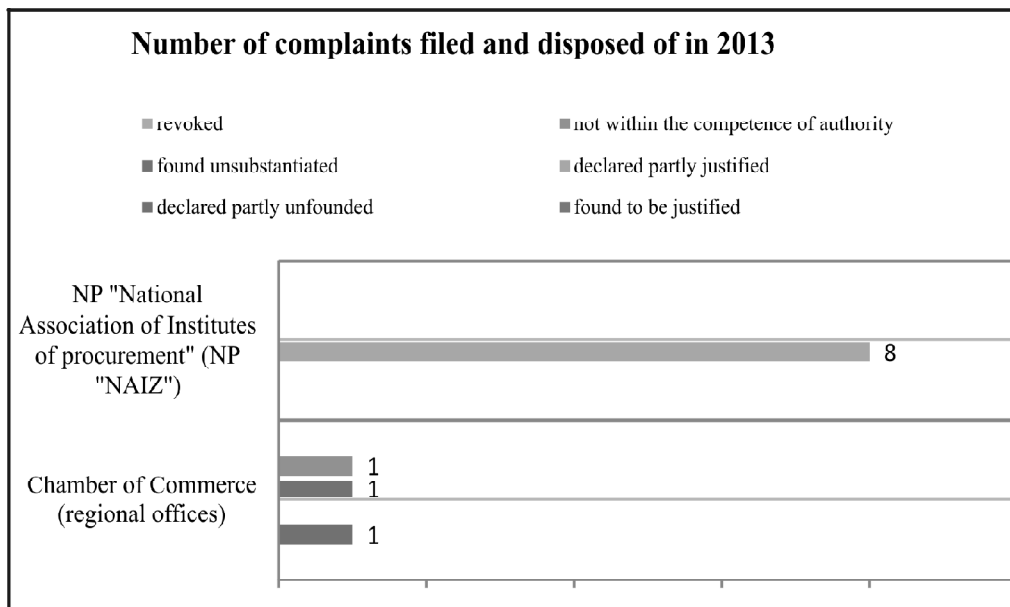


Figure 2: Practice associations complaints to regulatory authorities



Analysis of the data shows that the highest activity among the subjects of public control is often associations. This fact is quite natural in view of the fact that the association of citizens in voluntary, self-governed, non-profit formation able to consolidate the initiative of citizens to pursue common goals. And it is a community of interests of citizen's initiative forms the basic conditions for the establishment of a legal entity. Thus, analysis of activity of subjects in the direction of public control over the placement of the order identifies the most effective entity that was the subject of the first question. However, the most effective subject does not necessarily demonstrate sufficient capacity to meet the challenges of social control. Therefore we need to describe each of the subjects to answer the second question - which of these types of entities has the greatest potential to meet the challenges of public scrutiny?

In Russia, there are associations of legal entities in different kinds of associative education. There are few such entities, and their ability to GR-management primarily due to the direct interest of the state in the interaction, however, they have an impact on the development of public policy in the area of procurement. An example of successful cooperation is the development and testing of the current federal law currently in force 44-FZ, in which the mechanisms implemented for public discussions, monitoring of public opinion, as well as the inclusion of members of the associations of the committees of the State Duma and the Expert Council of the Russian Government. However it is impossible to argue that public organizations in the form of an association of legal persons are subject to the optimal control in the sphere of public procurement for several reasons. Firstly, social control is only one of the directions of their activity, so the vertical hierarchy of control is a direct obstacle to the operational activities of individuals (units) across the association. Secondly, public authorities and management involved in the creation and functioning of associations of legal entities. In fact, it is impossible to argue that unions represent public opposition to the current system of government, on the contrary, the association's activities aimed at close cooperation, lobbying in the implementation of public policy. In this case there is no illusions as to what is (public or state) administrative resource is more efficient and priority. Therefore, the interaction of such unequal partners inevitably causes the risk of loss of independence in terms of the positions and activities of the weaker partner, and what are the public associations of the associative character.

In contrast to the associations of legal entities initiative of individuals aimed at addressing individual needs and, much less, a group of citizen's requests. The source of initiative is a recognized need restoration of violated rights; it is expressed by the right to petition the government and management. It is impossible to speak about a stable character expression such initiatives, its emergence, dynamics and manifestations cease completely depends on a conjuncture of the problem situation.

Consequently, the limits of initiatives limited complexity and duration of decision of request for a remedy.

So to solve the problems of social control too cumbersome education associations, and the initiative of individual citizens - is unstable. It turns out that an association as a form of expression of will, opinions, attitudes group of citizens is the most viable form of expression and demonstration of citizenship. The reason seems to be that these citizens are united by a common idea, which is the leitmotif of all activities of the association and each of its members. For public inspection in the procurement of such an idea is the fight against corruption. Exactly idea is the energy center of the action association of citizens who may, through participation in the activities of public associations to express and implement their own citizenship. Management structure independently acting public association has no flaws structure associations; objectively public association has more flexible management structure and can effectively carry out operational tasks even within large-scale projects. Of course, the possibilities of their GR-management are not as extensive, but the risks are negligible loss of independence that makes them the best subject of public scrutiny in the area of procurement. Thus, the second issue is also resolved.

RESULTS AND DISCUSSION

As the analysis, the degree of involvement of stakeholders in the process of social control planning and allocation of public procurement disastrously low. The causes of this condition may include the following factors: the lack of an adequate legal and regulatory framework governing the procedure for public oversight; lack of implementation of existing mechanisms of social control function; lack of public confidence in the state's policies related to the contract system. Determine the degree of importance these reasons.

Availability of full legal status required to implement the function of social control and the activities of his subject's means that at this stage the government has already created the necessary legal basis:

- civil law governing procedure of organization and functioning of public organizations;
- legislation governing the contract system (the functioning of the system of information support of procurement, procurement procedure of public discussion);
- legislation governing the procedure for consideration of citizens (legal entities).

This framework is flawed because the mechanisms, by which legal norms are implemented, are not effective enough. Such deficiencies are manifested in the

details, but do not allow to fully implementing the function of social control. For example, the order of the full-time settled stage of public discussion of major purchases, however, a mechanism that would not allow the contracting authority directly or indirectly restrict access by public inspectors to the venue stage of discussion is missing. Another example, settled order of the electronic trading platform, however, information about the statistics of participants' access restrictions area to purchase bidding procedure is not available for public control subjects, ie, an area of corruption risks derived from the focus of public scrutiny. Many such details in connection with the introduction of the contract system will be much more, because introduced new tools. Many such details in connection with the introduction of the contract system will be much more, because introduced new tools. Legal mechanisms cannot approve virtually eliminate the shortcomings and then put in place on the scale of the entire state. Approbation carried out in a pilot mode for individual regions or on a smaller scale. For example, there is now a mechanism for public discussion of major purchases, but in the long run, this mechanism can be extended to a larger scale. A similar practice can be observed when testing individual institutions contract system for seven pilot projects[2] "Open procurement" in the framework of the Open Government of the Russian Federation.

Thus, to identify deficiencies legal mechanism is only possible in the order of probation, to participate actively in which subjects have the right to public scrutiny. Now the media is mostly criticized the state policy in the field of regulation of the activities of state customers, however, it is obvious that the consistency of criticism depends on the degree of involvement of critic in the implementation of public control. And the results above activity of subjects of social control do not show a proper degree of engagement. Consistent criticism aimed at improving management processes, it involves the identification of gaps as a way to justify the proposed changes, in contrast to the destructive criticism.

The most optimistic forecast the result of government policy should be to intensify processes involving citizens in the sphere of social control, because only with the participation of the company may be offset by the risk of corruption activities of government customers. The most obvious approach to the implementation of this prediction is the gradual development of the legal framework and improving mechanisms for regulating public procurement. However, it is certainly necessary action does not solve the problem of lack of public confidence in the state's policies related to the contract system as the third reason, which is given in support of the low activity of subjects of public scrutiny. Source of confidence is the confidence of citizens in the fact that their social initiative is a call to action for the government to eliminate corruption risks in procurement. Citizens need to be confident in the run-state program of action to combat corruption. Today statements, according to which the effectiveness of anti-

corruption mechanisms are not more than a slogan gaining popularity, the positive effect of which is constantly decreasing due to inactivity real authorities. However, these statements are not supported by systematic research and cannot be formalized in a set of indicators that characterize the problem of trust in the whole scale of the entire state.

Thus, to assess the degree of public confidence in government policies using direct methods is not possible, because there is no such assessment methodology. However, using the interpretation of indirect indicators according to the activity of the public can come to some conclusions that characterize how the public is willing, interested and capable of performing the function of social control in procurement. Some of these indicators are: the degree of active participation in public discussions of major procurement activity level submitting requests to public authorities, the degree of active participation in electoral activities.

Starting in 2014 showed a positive trend for the development of areas of public discussion of major purchases. It was noted that in the first half of 2014 in 66% of cases there was a public discussion in the prescribed manner. At the same time, 81% of the procedures performed controllers public discussion was not given any recommendations, discuss procedures were not subjected to expert assessment and were not commented publicly. Number of visits to a specialized section on the national official website for 2013 has tripled. According to the results of public discussions completely abolished more than 23 purchases, 32% of customers have made changes. We assume that the activity of public controllers could be higher if it were not clear gaps about public hearings, which have been identified in the validation process during 2013. Another factor reducing the activity is the need for the user to pre-registration portal of public services of the Russian Federation. However, the main obstacle, of course, is the lack of a sufficient number of experts among public supervisors who can competently perform the function of social control, with those on a volunteer basis. Compile, analyze and develop corrective mechanisms with the obligatory participation of organizations of public examination - the next necessary step in the development of areas of public discussion.

The above data indicate a very low level of activity feed applications (complaints) by citizens and civil society organizations in the supervisory bodies of the actions (inaction) of state customers and operators of electronic platforms. If you expand the subject area of the request, the effectiveness of this kind of public initiative also diagnosed at a low level. This is evidenced by statistics on the activities of the work with citizens and legal entities of the Presidential Administration of the Russian Federation [3]. For example, the total number of complaints received by the oral, written and electronic form, for the month of May 2014 for the thematic cluster "economy" was 12176 hits. 5479 of them - on matters under the jurisdiction of the Russian Federation. If you clarify a sample, thematic

section "finance" is 2423 treatment, some of them certainly - appeals on matters relating to public control in procurement.

The statistical data does not take into account the degree of satisfaction applied on the consideration of appeals. Therefore, the low activity may be caused by a lack of legal awareness of the population, due to which citizens can not file an appeal on their own, and the lack of confidence that manifested initiative really triggers the mechanism of software (recovery) civil rights and liberties.

The degree of participation by citizens in the electoral activities can be interpreted by evaluating the results of the elections and opinion polls conducted by independent centers. However, these sources of information have its own features and limitations. The purpose of the survey is to identify certain contingent opinions on certain issues and often installed variability of responses. On the other hand event's organizers have elected more than anyone, capable of carrying out evaluation and analytical study of the process of the election results. However, publicly available data are only for the elections at the federal level, while data of the municipal elections, systematized, generalized into a single database, are closed to the public. Data on municipal elections, certainly more clearly demonstrate civic engagement as local issues are the subject of the inner circle of interests of each citizen. As a result the polling mechanism has natural limitations and the results of the municipal elections are not kept in the open database.

If you provide data analysis of electoral activity (electoral ratings parties), published by the Center for Strategic Research in June 2013, 2% of respondents would spoil the ballot and 18% of respondents would not go to the elections to the State Duma. Overall, 20% of respondents show their civic stance, ignoring the election or deliberately leaving his voice without regard. It does not characterize the low electoral activity of citizens, but clearly shows a lack of confidence in the legislative bodies representing the interests of citizens. If you wonder to what extent the activity of the population determined by the level of protest potential, we can give the following data. According to the same study, the willingness to take part in protest actions expressed 19% of individuals with heightened aggression, 21% of respondents refuse to participate in the rally, but are against the government, the proportion of those who are in favor of power, 6% and 2% - share those who goes to the rally in support of the authorities. As a result, people with higher activity are also characterized by increased aggressiveness and willing to actively exercise their civic position. It turns out that citizens with increased aggressiveness have a large protest potential, which is directly proportional to the level of activity and inversely proportional to the level of confidence in the government.

Leads to the question of how active citizens with a high protest potential exert their citizenship, and their initiative that aims? Based on the findings of the above,

public control - the inheritance of concerned citizens, which are characterized not only active citizenship, but also a high level of passionarity. Performing the function of social control these citizens express their civic position, according to which officials of state customers - public servants are identified directly with the public customer and a direct analogy with the state. This trend could lead to a political imbalance, when the right to express their civic stance subjects of public control in procurement be realized, not in order to eliminate corruption risk and to identify the criminal nature of action (or inaction) of the individual officers, and to express their protest against the political regime as a whole.

On the other hand actively pursued as public control can be a positive mobilizing idea, which can tap the potential of citizens and lead to a rational dialogue between society and the state. According to experts and surveys, at the present stage the society there is a request for a national idea, which also entails requests patriotism and mission of the Russian state in the world. However, the primary still be considered a request for an effective state and dissatisfaction with corruption. Executing this query is a necessary step to fulfill the rest. Ideological motives of society should be compensated by the state activity behavior change official, uniquely associated with corruption.

FINDINGS

The fight against corruption, as already stated is actual. Society dissatisfied with the level of corruption, which reinforces the negative attitude towards the state as a whole. However, it appears that the level of passionarity the Russian population does not correspond to the model barricade fighting. However, this does not preclude a tendency to redirect aggression different but related state object - officials. It can, but should not be the motive revitalization of public control in procurement. The main factors, the existence of which provokes the development of negative processes are as follows: lack of development practices to combat corruption (no open system information on the results of the fight against corruption in procurement); disadvantages of the trial process and the monitoring of compliance with public procurement (confidence in the objectivity and independence of judges and supervisors); disadvantages of mechanism to work with citizens and legal entities.

If these factors continue to be effective, it can lead to the following consequences: falling public confidence to a critical level, the lack of public support for the state's policy, strengthening of the protest movement, whose members are united by the idea of a protest against the weak, the dormant political regime. Decrease in the values of these factors will contribute to the contrary strengthen civil society, unity and political priorities of the population of the state and public control activation as a real anti-corruption mechanism.

The function of social control will expand the necessary impetus already given in this direction, but now this feature is associated with the idea of people (the fight against corruption is the struggle with the officer) and not with the idea of creating a public regulator to build a strong state. If the state does not take into account the processes and factors enhancing public scrutiny and will insist on the idea of finding and fighting the external enemy - public control in procurement instead of inheritance indifferent becomes a tuning fork of public aggression.

References

Approx.: In calculating the indicator does not take into account the complaints were withdrawn, returned (decorated with violations), not within the competence of the supervisory authority in the area of procurement.

List of pilot projects: the republic of Tatarstan, Bashkortostan Republic, Krasnoyarsk Krai, Novosibirsk region, Kaluga region, Vologda region, Rosatom. URL: <http://xn--80afmfjaylox.xn--80abeamcuufxbhgound0h9cl.xn--p1ai/> (date accessed 28.06.2014).

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