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ADMINISTRATIVE AND LEGAL PROBLEMS REGULATION OF OPEN BIDDING APPEALS

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Abstract. The article identifies the problems of administrative and legal regulation of appeals of open tenders at the national level, which are recognized as one of the most serious threats to economic security and stable development of the country, especially in crisis situations. The author used the following research methods: dialectical, comparative-legal, formal-logical, special legal methods.

It was established that the gradual Europeanization of national legislation in the above-mentioned area, slow digital transformation, non-involvement of the public in issues of contesting open tenders, affect the effectiveness of the Antimonopoly Committee of Ukraine in resolving cases regarding contesting open tenders, significantly complicate the implementation of anti-corruption policy, create new factors for abuses, change the mechanisms of public administration, which creates new challenges for the national legal system. Ways of implementing positive foreign experience in the legal regulation of contesting open tenders in Ukraine are proposed. The directions of further scientific research in the field of administrative and legal regulation of contesting open tenders during martial law in the context of European integration have been clarified.

Key words: open bidding procedures, subject of appeal, Antimonopoly Committee of Ukraine.

Introduction. The purpose of the article is to find out the administrative and legal regulation of contesting open tenders on the basis of a thorough and comprehensive analysis of scientific, provisions of current and prospective legislation of Ukraine and foreign countries, law enforcement practice.

Despite the significant development of administrative and legal science, today not enough attention is paid to the specifics of the legal regulation of contesting open tenders under martial law. This is because martial law creates special conditions that require rethinking many legal mechanisms, including administrative legislation, strategies to combat violations in the field of open bidding and guarantees of citizens' rights.

In particular, some aspects of contesting public procurement are explored in the works of M.V. Afanasieva, O.I. Baik, V.O. Bass, I.H. Bogatyuk, V.O. Golub, A.T. Komzyuka, M.A. Komzyuka, T.G. Korzh-Ikaeva, O.P. Kotlyarenko, S.O. Kuznichenko, S.V. Kulyk, E.A. Lipii, V.V. Lobko, O.P. Mandryky, T.P. Minky, O.I. Ostapenko, V.Y. Pashinsky, M.M. Prokhorenko, M.I. Rustamova, A.S. Slavko, D.B. Stupak, A.V. Tymoshenko and others. However, it is necessary to state the absence of a comprehensive legal act that would fully and comprehensively regulate the administrative and legal regulation of contesting open tenders. Therefore, the study of relevant problems is extremely relevant and has great theoretical and practical significance. This article will contribute to the creation of effective ways and mechanisms of combating problems and negative manifestations in the field of contesting open tenders in Ukraine.

The main part. In order to achieve the goal set in the article, it is necessary to solve the following tasks: characterize the problems of administrative and legal regulation of contesting open tenders; to characterize the system of normative and legal foundations of administrative and legal regulation of contesting open tenders; to analyze the control functions of authorized entities in the field of contest-

ing open tenders; to develop specific ways of improving the administrative and legal system regulation of appeals of open tenders under martial law in the context of European integration.

Today, the issue of public procurement is one of the most acute problems, which today has gone far beyond the boundaries of purely economic topics. The situation in this area remains uncertain and conflictual, and all participants in the public procurement process note their inefficiency and the presence of numerous abuses. The public procurement market is quite significant in terms of its volume – UAH 120 billion, and the problems that arise in it affect the state of other industries, the quality of public administration, etc. The main problems relate primarily to the legal and institutional framework of the public procurement system. The Antimonopoly Committee of Ukraine (authorized body), which is a quasi-judicial body, is the key body in the open tender appeal system in accordance with current legislation.

Open tenders are one of the most widespread and important mechanisms for ensuring transparency, fair competition and compliance with legality at all stages of the open tender procedure. They are a key factor in effective administration of state resources and prevention of corruption.

However, despite the legally established procedures, violations may occur in the process of organizing and conducting open tenders, which lead to restriction of competition, discrimination of participants or illegal alienation of property.

Research material and methods. The author used the following research methods: dialectical, comparative-legal, formal-logical, special legal methods.

Despite the fact that pre-trial appeal mechanisms (appeal to the auction organizer and/or authorized bodies) are designed to ensure prompt resolution of disputes, in practice they often demonstrate insufficient efficiency. This may be caused by a number of factors that undermine the confidence of participants and interested persons in this stage of protecting their rights.

In many cases, the auction organizer is a directly interested party in the results of the auction or may be related to the persons whose actions are being challenged. This can lead to a biased consideration of complaints and a reluctance to admit one's own mistakes or violations.

Even in cases where the organizer recognizes the complaint as well-founded, there are no effective mechanisms to enforce the decisions made by it. This may lead to complaints being ignored or formally responded to.

Auction organizers do not always have sufficient legal qualifications for objective and comprehensive consideration of complex legal issues that may be contained in complaints.

Consideration of complaints by the organizer may be of a formal nature, without proper investigation of the evidence and justifications of the complainant. This can lead to unjustified refusals to satisfy complaints.

Uncertainty of the terms of consideration, the procedure for submitting additional documents, holding meetings with the complainant can create conditions for abuses and prolonging the process.

Insufficient transparency of decision-making by the organizer. The organizer's decision based on the results of the complaint review is not always sufficiently motivated and substantiated, which makes it difficult to understand the reasons for the rejection or partial satisfaction of the complaint.

Overloading of authorized bodies (for example, AMCU). Although the AMCU is a more independent body, a significant number of complaints submitted to it for consideration can lead to a delay in their consideration and a decrease in the efficiency of responding to violations. Limitation of the powers of authorized bodies. In some cases, the authority of authorized bodies to take effective measures to respond to detected violations may be limited. For example, they may not have the right to directly cancel illegal contracts or prosecute wrongdoers. Lack of effective control over the activities of authorized bodies. Insufficient control by society and the state over the activities of pre-trial appeal bodies can lead to their inefficient performance of their functions.

Insufficient trust of participants in pre-trial mechanisms. Due to the above-mentioned problems, participants and interested parties may not believe in the effectiveness of pre-trial appeals and immediately go to court, which overloads the judicial system.

Directions for improving the effectiveness of pre-trial appeal mechanisms can be classified according to certain criteria. The first criterion is to ensure the independence and impartiality of pretrial appeal bodies. The essence of this criterion is the creation of mechanisms that minimize the influence of interested parties on the process of considering complaints. The second criterion for establishing the mandatory implementation of the decisions of pre-trial appeal bodies. Introduction of mechanisms of control and responsibility for non-implementation of well-founded decisions.

The next criterion for improving the qualifications of persons responsible for considering complaints. Ensuring the appropriate level of legal knowledge and understanding of the specifics of conducting open tenders. The fourth criterion is the introduction of clear and transparent complaints handling procedures. Which consists in establishing regulations regarding deadlines, the procedure for submission and consideration of documents, and decision-making. Also, the next criterion is the provision of proper motivation and responsibility of pretrial appeal bodies for high-quality and timely consideration of complaints. Extension of powers of authorized bodies. Providing them with effective tools for responding to detected violations. Ensuring the openness and publicity of decisions made based on the results of complaints consideration. Implementation of effective feedback mechanisms with complainants and accounting of their opinion regarding the effectiveness of the appeal procedure.

Improving the effectiveness of pre-trial appeal mechanisms will allow for prompt resolution of a significant part of disputes, reduce the burden on the judicial system, and increase confidence in open tender procedures. This, in turn, will contribute to ensuring legality, transparency and efficiency in this important area.

Results and their discussion. The work of Yu.O. Avramets, M.P. Bublîi, A.M. Brovdiy, I.V. Vlyalko, Ya.V. Horbatyuk, O.A. Danylyuk, V.G. Datsyuk, A.A. Zagrebelska, N.G. Zdyrko, V.P. Iordanov, V.S. Konstantinova, O. O. Krytenko, N. V. Kulak and others.

Unfortunately, in the above-mentioned works, the procedures for holding and contesting open auctions are fragmentarily defined, certain types of violations during open auctions that may be grounds for appeal are considered, and the appeal procedure at various stages of auctions is not investigated, and the judicial practice on contesting open auctions is not fully considered. In our opinion, it is necessary to pay special attention to the analysis of the effectiveness of the existing appeal mechanisms and the problems that arise in practice.

According to V.B. Averyanova, the legislation on public procurement in Ukraine is a key tool for regulating relations between customers and suppliers (contractors, service providers), an opportunity to protect rights in the field of public procurement when they are violated.

Andriyko O.F., Bevzenko V.M. drew attention to the main reasons for receiving complaints to the AMCU: deliberately complicated requirements for open bidding, intentional violations of the terms of open bidding by customers.

Having analyzed the legislation on public procurement, it is possible to determine ways to overcome the problem of prolonging the terms of consideration of complaints.

First, amendments to the legislation and internal regulations of appeals bodies in order to simplify and speed up the process of handling complaints, increase the number of staff and improve the qualifications of employees of appeals bodies and courts (Kodeks administratyvnoho sudochynstva Ukraini, 2017). Secondly, ensuring adequate resource and technical support of appeals bodies and courts, increasing responsibility for violation of the time limits for consideration of complaints. Thirdly, implementation of effective mechanisms for monitoring compliance with deadlines, active use of information technologies, optimization of electronic systems for submission and consideration of complaints. In addition, it improves coordination between the various bodies involved in the appeal

process, with avoiding the abuse of procedural rights by the parties by establishing clear rules and consequences of such abuses. Establishing clear criteria for determining the complexity of cases and differentiating the terms of their consideration.

Overcoming the problem of prolonging the terms of handling complaints is an important task to ensure the effective functioning of the open bidding appeal system and to protect the rights of all interested parties. This will help increase confidence in bidding procedures and strengthen legality in this area.

In our opinion, the ways to solve problems with proving violations are:

– Expanding participants' rights to access to information: Statutory consolidation of the organizers' obligation to provide participants with copies of documents related to the bidding procedure at their request (with the exception of information that

– constitutes a commercial secret of other participants) (Postanova Verkhovnoho Sudu, 2023);

– Ensuring mandatory recording of key stages of the bidding procedure: Establishing requirements for keeping detailed protocols, audio and video recording of important procedural actions;

– Strengthening responsibility for manipulation of documentation and provision of false information.

– Ensuring the protection of witnesses: Creation of mechanisms to protect persons who provide information about violations from possible pressure or persecution;

– Providing appeals bodies and courts with broader powers to demand evidence: Ensuring the possibility of independent collection of evidence, conducting examinations, etc.;

– Introduction of mandatory publication of minutes of meetings of tender committees and justifications of decisions made.

– Improving the qualifications of participants and their representatives in matters of gathering and filing evidence (Postanova Velykoyi Palaty Verkhovnoho Sudu, 2018; Postanova Verkhovnoho Sudu, 2022).

– Ensuring the transparency of the work of electronic procurement systems and the possibility of conducting an independent audit of their work.

– Unification of judicial practice regarding the assessment of evidence in cases of contesting open tenders.

Solving problems with proving violations will contribute to increasing the effectiveness of the appeal procedure, ensuring fairness and legality in conducting open tenders, as well as reducing the level of corruption in this area.

The procedure for contesting open tenders, although designed to ensure legality and transparency, is not itself free of corruption risks. Unscrupulous participants, organizers or officials may use appeal mechanisms to achieve their own selfish goals, thus distorting the purpose and principles of fair competition.

The main corruption risks associated with the open tender appeal procedure:

Procurement complaints: Bidders may submit known unfounded or formal complaints in order to delay the procedure, create obstacles for competitors or obtain certain advantages (for example, time to prepare a better offer, pressure on the customer to make a favorable decision). The order of such complaints can be made both by competitors and by the customer himself (for example, to eliminate an unwanted winner or legalize one's own violation);

Bribery of members of appeal bodies;

Collusion between the complainant and the organizer: In some cases, the complainant and the organizer of the auction may enter into a collusion to artificially create grounds for appeal and subsequent cancellation of auctions with a favorable result for them (for example, to conduct re-auctions with a predetermined winner).

Using the appeal as a tool of pressure: Participants can use the threat of filing a complaint or an already filed complaint as a tool of pressure on the customer in order to obtain certain preferences or change the terms of the contract;

Corruption at the stage of implementation of decisions of appeal bodies and courts: Even in the case of a legal decision based on the results of the complaint review, there is a risk of corruption at the stage of its implementation (for example, delaying implementation, making illegal demands);

Non-transparency of the complaint handling process: Insufficient transparency of individual stages of complaint handling (for example, closed meetings, lack of detailed justification of decisions) can create conditions for corrupt practices;

Use of mediators: In the appeal process, mediators may appear who, for a fee, promise to influence the decisions of appeal bodies or courts, which is a direct corruption risk;

Manipulation of appeal deadlines: Unscrupulous participants or organizers may try to manipulate the deadlines for submitting and processing complaints in order to obtain illegal advantages.

We offer a system of measures to minimize corruption risks when contesting open tenders: increasing the transparency of the appeal procedure: Ensuring the openness of meetings of appeal bodies (if possible), publishing decisions with detailed justification, online broadcasting of meetings; ensuring the independence and impartiality of members of appeal bodies and judges: Implementation of effective mechanisms of selection, control and responsibility for persons who make decisions based on the results of complaints; increased responsibility for filing groundless complaints. Establishment of fines or other types of liability for abuse of the right to appeal; implementation of effective mechanisms for the prevention and detection of conflicts of interest. Ensuring transparency of property statuses and connections of persons involved in the appeal process; increased public scrutiny and anti-corruption bodies for the appeal process; provision of mandatory recording of all key stages of complaint consideration (audio and video recording of meetings); optimization of the terms of consideration of complaints: Establishing reasonable and clear terms of consideration and ensuring their observance; improving the qualifications of persons involved in the appeal process in matters of anti-corruption legislation and ethics; introduction of effective channels for reporting corruption offenses and ensuring protection of whistleblowers; active use of information technologies: Ensuring the security of electronic appeal systems against unauthorized intervention.

The minimization of corruption risks in the open bidding appeal procedure is an important element of ensuring the integrity and efficiency of the entire system of public procurement and alienation of state/municipal property. This will help increase trust in state institutions and create a favorable business environment.

To improve the efficiency and fairness of the open tender appeal procedure, a comprehensive approach is needed, including the improvement of both legislative regulation and the practical application of existing norms.

Based on the current legislation, we offer the main ways to improve the legislation. The first direction is the unification and systematization of legislation: the development of a single legislative act regulating the procedure for contesting open tenders, regardless of their type (public procurement, privatization, lease, etc.), with the aim of eliminating inconsistencies and establishing uniform principles and procedures; codification of rules relating to appeals to ensure their accessibility and comprehensibility.

The second direction. Detailing and clarification of procedures: clear regulation of deadlines, procedure for submitting documents, conducting meetings, decision-making at all stages of the appeal; establishment of an exhaustive list of grounds for appeal at each stage of bidding; clarifying the rights and obligations of the complainant, the auction organizer and appeal bodies.

The third direction. Strengthening liability for violations: establishing tougher sanctions for violations of the law on open bidding, including financial fines, disqualification of officials and participants; introduction of liability for submitting knowingly groundless complaints for the purpose of abusing the right to appeal; strengthening of responsibility for non-implementation of decisions of appeal bodies and courts.

The fourth direction is the optimization of the terms of appeals and consideration of complaints: establishing realistic and mandatory terms for submitting and considering complaints at all stages; ensuring proper control over compliance with these terms; implementation of procedural economy mechanisms to speed up the consideration of cases.

The fifth direction of ensuring the independence and impartiality of appeal bodies: establishing clear criteria for the selection and appointment of members of appeal bodies; introduction of mechanisms for the prevention and settlement of conflicts of interest; ensuring the financial and organizational independence of appeal bodies.

The sixth direction – expansion of access to information: legislative consolidation of the right of participants to receive complete and timely information about the bidding procedure and the decisions made; ensuring mandatory publication of minutes of meetings of tender committees and justifications of decisions.

The seventh vector of improvement of the legislation regarding the appeal of open tenders is the improvement of judicial appeal: specialization of judges who consider cases regarding the appeal of open tenders; unification of judicial practice in this category of cases; ensuring the efficiency of the trial.

Ways to improve appeal practice:

1. Improvement of qualifications of participants and representatives:
 - Conducting training programs and seminars on the legislation on open tenders and appeal procedures.
 - Encouraging participants to engage qualified legal consultants.
2. Improving the work of pretrial appeal bodies:
 - Ensuring the appropriate level of competence and impartiality of persons who consider complaints.
 - Implementation of clear and transparent internal complaints handling procedures.
 - Ensuring proper justification of the decisions made.
 - Monitoring the effectiveness of pretrial appeal bodies and taking measures to improve it.
3. Activation of public control:
4. Implementation and effective use of information technologies:
 - Further development and improvement of electronic appeal systems.
 - Ensuring the possibility of online broadcasting of meetings of appeal bodies (upon agreement of the parties).
 - Implementation of electronic document flow at all stages of the appeal.
5. Strengthening of anti-corruption measures:
 - Implementation of effective mechanisms for the prevention and detection of corruption offenses in the appeal process.
6. Increasing the level of legal culture and awareness:

The implementation of these ways of improvement will contribute to the creation of more public trust in state institutions.

In the science of administrative law, the practice of the application of legislation regarding contesting open tenders, the existence of three vectors has been revealed: 1) research into the field of open tenders in an inter-industry aspect; 2) study of the "administrative procedure (pre-trial) appeal of open tenders", features of their application, their content and characteristics; 3) the study of judicial procedure (public legal disputes in administrative courts, commercial courts), which goes beyond the scope of our research. Within the framework of the first vector, there are works that examine various aspects of appeal open tenders (in the fields of economic, civil, information law) with a fragmentary focus on administrative and legal regulation, and there are scientific works devoted directly to the administrative and legal regulation of public procurement and specific issues of this institute. In turn, research on the topic of administrative and legal regulation of appeals to open tenders covers not only the theoretical aspects of the administrative (out-of-court) nature of appeals to open tenders, but also

focuses on the practical features of their pre-trial alternative version of dispute settlement with specifics, including during martial law.

Attention is paid to procedural and procedural aspects of consideration and resolution of relevant administrative cases. The tasks and the list of stages of contesting open tenders are clarified, namely the stages of violation of the procedure of contesting open tenders, consideration and resolution of the complaint, appeal of the complaint, implementation of the decision issued by the Antimonopoly Committee of Ukraine (Commission). Each stage and actions of the stages of contesting open tenders are analyzed. The content of the European integration reforms of Ukraine in the field of administrative and legal regulation of contesting open tenders, the state of implementation of the acts of the European Union in the national legislation is outlined. The list of relevant projects and initiatives in the field of administrative and legal regulation of contesting open tenders implemented in Ukraine within the framework of European integration processes has been determined. The directions of further scientific research in the field of overcoming corruption in the field of public procurement during martial law in the context of European integration have been clarified.

The classification of problems of administrative and legal regulation of contesting open tenders in the conditions of martial law is given. They are divided into three groups – organizational, regulatory and procedural. The first group of problems arose as a result of force majeure circumstances that arose as a result of Russia's armed aggression. In particular, these are problems the lack of administrative and legal regulation of the appeal of open tenders, as one of the procedures, as well as the problem of determining the specifics of such an appeal under certain administrative and legal regimes (for example, martial law, digitalization, and others).

It is outlined that the Law of Ukraine "On Administrative Procedure" does not apply to the administrative procedures of contesting open tenders, as the latter have their own specifics and are regulated by the general norms of the Law of Ukraine "On Public Procurement". Each separate administrative procedure of public procurement, including the procedure of open tenders, is administrative in nature and can be challenged only in the administrative procedure.

It is described that the administrative and legal stage of open tender appeals is carried out with the help of an electronic document (complaint) in the information field between the subject of the appeal and the appeal body and aims to stop violations in the field of open tenders using the tool of the electronic procurement system.

The position that contesting open tenders is an intrusive procedure designed to protect the interests of the state in the effective spending of public funds is analyzed.

Attention is paid to the scientific understanding of the features of administrative procedures of public procurement: 1) they are mostly open (public) in nature, that is, the procedures are conducted in such a way that the parties and other interested persons have access to the state of affairs in the process of implementing such a procedure; 2) are mostly implemented in electronic form; 3) aimed at ensuring the proper functioning of the public procurement system.

It is outlined that the problems of administrative procedures for public procurement appeals are mediated by public-law relations between the complainant and the Antimonopoly Committee of Ukraine, which is vested with administrative powers and reviews the complaint of an interested person in an administrative manner.

Discussion. Ensuring compliance with legislation during open tenders is an important factor in preventing corruption, ensuring effective use of public funds and legal alienation of state and communal property.

Despite the existence of a legal framework regulating the procedure for contesting open tenders, there are certain imperfections that can make it difficult for interested parties to do so effectively. These shortcomings can lead to a delay in the appeal process, ambiguous interpretation of norms, insufficient effectiveness of the decisions of appeal bodies, and other negative consequences.

The main shortcomings of the legal regulation of the procedure for contesting open tenders are the disparity and fragmentation of the regulation. The procedure for contesting open tenders is regulated by various legal acts depending on the field of tenders (public procurement, privatization, lease of state/municipal property, etc.). This can lead to inconsistency of norms, different levels of detailed procedures and make it difficult to understand the general principles of appeal. Certain provisions of the law governing appeals may be vague or open to different interpretations. This can lead to subjectivity in the consideration of complaints and decision-making by appeal bodies and courts. In some cases, the legislation may not regulate individual stages of the appeal procedure in sufficient detail (for example, the procedure for submitting evidence, holding meetings of appeal bodies, making decisions), which can create room for abuse or delaying the process. Decisions of pre-trial appeal bodies (especially auction organizers) are not always effective or fully implemented. The lack of proper mechanisms for monitoring the implementation of these decisions can devalue the very institution of pre-trial appeal.

In some cases (e.g. court fees, legal fees) the financial costs of an appeal can be significant, which may deter participants and interested persons from using this mechanism to protect their rights.

There is a risk of dependence of appeals bodies (especially auction organizers) on the persons whose actions or decisions are appealed, which may affect the objectivity of complaints consideration. Lack of effective mechanisms.

Even in the case of a positive court decision, the process of its implementation can be difficult and long, which actually nullifies the efforts of the complainant. In some aspects, the national legislation on open tender appeals may not fully meet international standards in the field of public procurement and protection of participants' rights.

Prolongation of time limits for consideration of complaints is one of the most common and significant problems in the procedure of contesting open tenders both at the pre-trial and at the judicial stages. This phenomenon can have negative consequences for all stakeholders, including complainants, bidders and society at large.

The reason for the delay in considering complaints is the overloading of appeal bodies and courts. Some complaints may relate to complex legal issues, require a detailed analysis of a significant amount of documents and additional research, which objectively increases the time for their consideration. The absence of clear regulations on individual stages of complaint consideration or the presence of gaps in the legislation can create opportunities for delaying the process, insufficient resource provision of appeals bodies and courts, lack of qualified personnel, technical equipment or funding can also slow down the processing of cases.

Participants in the appeal procedure may use various procedural tools (for example, filing multiple motions, appealing interim decisions) in order to delay the consideration of the case. Insufficient control over compliance with the established deadlines for considering complaints and the absence of effective mechanisms of responsibility for their violation can contribute to delaying the process.

In cases where the resolution of a complaint requires interaction between different public authorities, insufficient coordination can lead to delays.

Information and technical problems in electronic technical systems. Adversely affecting appeals in the field of public procurement, technical failures or deficiencies in the operation of the Prozorro electronic system can complicate and delay the process of filing and handling complaints.

Prolonged consideration of a complaint may result in the violations complained of by the participant remaining uncorrected for a considerable period of time, causing him losses or depriving him of the opportunity to participate in the bidding on legal grounds.

Prolonged consideration of complaints can lead to significant delays in conducting open tenders, concluding contracts and meeting the needs of customers or the state/community in the disposal of property.

If the appeals process is lengthy and ineffective, participants and stakeholders may lose confidence in this mechanism for protecting their rights and refuse to use it.

Delays in handling complaints can create favorable conditions for unscrupulous bidders or winners, allowing them to consolidate illegal bidding results.

Prolonged processing of cases can lead to increased costs both for the complainants (for example, for legal services) and for the state (for the maintenance of appeal bodies and courts).

Circumstances may change during the long period of consideration of the complaint, and the subject of the appeal may lose its relevance.

Prolonging the consideration of disputes in the field of public procurement and privatization can negatively affect the country's investment attractiveness.

Eliminating the mentioned shortcomings will contribute to increasing the efficiency and legitimate interests of participants and interested persons, as well as strengthening legality and transparency in the field of conducting open tenders.

One of the key obstacles on the way to effectively challenging open tenders is the difficulty in proving the facts of violations of the law. Bidders and interested parties often face significant difficulties in gathering and providing adequate and admissible evidence to support wrongdoing or decisions by the auctioneer.

Current legislation has the main problems with proving violations during bidding: limited access to information: Bidders often do not have full access to the organizer's internal documentation, minutes of tender committee meetings, justifications for decisions made, and other information that could confirm the existence of violations. Organizers are not always willing to provide such information, citing commercial confidentiality or other restrictions; lack of obligation to record all stages of the procedure; manipulation of documentation: There is a risk that organizers of tenders may manipulate documentation (make retrospective changes, hide important documents, falsify protocols) in order to hide violations or complicate their proof; dependence of witnesses: Persons who may have information about the violation (for example, members of tender committees, employees of the organizer, other participants) may be dependent on the organizer or have their own interests, which prevents them from providing truthful testimony; the difficulty of establishing a causal relationship. Even if the fact of violation is established, it can be difficult to prove.

Technical difficulties with fixing violations in electronic systems. When conducting electronic auctions, technical failures or manipulations in the work of electronic systems may occur, the proof of which requires special knowledge and access to system logs, which are often inaccessible to participants. Insufficient qualifications of the complainants. Participants and interested persons do not always have sufficient legal knowledge and experience to correctly collect and process the evidence necessary to substantiate their complaint. Absence of effective mechanisms for obtaining evidence by appeal bodies and courts. Complaint handling bodies do not always have sufficient powers and resources to independently collect the necessary evidence, placing the main burden of proof on the complainant. Counteraction by the auction organizer. Bidders may resist providing information or documents necessary to prove violations, citing various legal restrictions or internal rules. Ambiguity of judicial practice regarding the evaluation of evidence. The lack of uniform approaches in judicial practice regarding the assessment of evidence in cases of contesting open tenders can make it difficult to predict the outcome of the trial.

Conclusion. In our opinion, the directions for improvement of the normative and legal regulation of the appeal procedure are the unification and systematization of the legislation. Development of a single legislative act that will regulate the procedure for contesting open tenders in various areas, with the aim of eliminating inconsistencies and ensuring uniform principles. In addition, it is a clarification and detailing of individual provisions.

Amendments to the legislation in order to more clearly and unambiguously formulate the norms governing the appeal procedure. As well as the introduction of clear and mandatory deadlines for considering complaints at all stages, strengthening control over the implementation of decisions of pre-trial appeal bodies and court decisions, reducing the financial burden on complainants during appeals, ensuring the independence and impartiality of bodies that consider complaints, increasing the transparency of the activities of appeal bodies. The harmonization of national legislation with international standards in the field of open tender appeals, the implementation of effective mechanisms of responsibility for violation of the complaint review procedure will contribute to the improvement of the administrative and legal regulation of open tender appeals.

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