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Общественный контроль за публичными закупками

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Аннотация: Статья посвящена общественному контролю за публичными закупками в России. Актуальность и научная новизна работы заключается в разработке и обосновании системы мер по разрешению комплекса проблем, препятствующих осуществлению общественного контроля за публичными закупками. Проведен анализ проблем, связанных с организацией и проведением мероприятий общественного контроля в отношении публичных закупок: отсутствия закрепления данного института гражданского общества в Конституции России; отсутствия в законодательстве об общественном контроле и законодательстве о закупках ссылки на возможность организации и проведения мероприятий общественного контроля; не разработанности в научной правовой доктрине и законодательстве конкретных форм, методов и видов мер общественного контроля в отношении публичных закупок; отсутствия реальных полномочий у субъектов общественного контроля; отсутствия в уголовном и административном законодательстве мер юридической ответственности за противодействие законной деятельности субъектов общественного контроля при проведении мероприятий общественного контроля в отношении публичных; отсутствия у субъектов общественного контроля организационной, технической, материальной и имущественной базы, достаточной для осуществления данного общественного контроля; неиспользования зарубежного опыта вышеназванного общественного контроля. В ходе проведенного научного исследования был использован ряд методов: формально-логический; сравнительно-правовой; историко-правовой; статистический; социологический; методы финансового анализа; метод изучения конкретных правовых ситуаций. Рассмотрены точки зрения относительно возможности и пределов общественного контроля в сфере публичных закупок. Обоснована роль и значение публичных закупок в системе объектов общественного контроля. Для решения этих проблем авторами была разработана и обоснована система мер, включающая: инкорпорирование института общественного контроля в Конституцию России; закрепление возможности его применения в отношении публичных закупок в законодательстве; разработку и внедрение под руководством Общественной палаты страны системы конкретных форм, методов и видов мер общественного контроля в данной сфере; закрепление системы реальных полномочий за субъектами общественного контроля в указанной области; закрепление в законодательстве системы мер ответственности за противодействие законной деятельности субъектов общественного контроля; укрепление организационной, технической и материально-технической базы субъектов общественного контроля; его оптимизацию с учетом положительного зарубежного опыта.

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ключевые слова:

общественный контроль, демократия, муниципальные закупки, публичные закупки, Российская Федерация, бюджет, эффективность, законность, целевой характер, оптимизация

Introduction.

General fundamental surveys of the organization and implementation of public control in the Russian Federation are widely studied in the works of N. A. Beleshev, [\[1, pp. 12-13\]](#) N. S. Lisina, [\[9, pp. 32-40\]](#) A. S. Prudnikov, [\[14, pp. 50-53\]](#) A. K. Sisakian, [\[18, pp. 29-35\]](#) A. A. Solovey, [\[19, pp. 38-41\]](#) J. Zalesny, [\[21, p. 1; 22, p. 1\]](#) as well as a number of other authors. At the same time, considerable attention is paid in the works of R. Y. Burimov, [\[2, pp. 103-111\]](#) L. V. Davydova, [\[3, pp. 36-43\]](#) V. V. Kikavets, [\[6, pp. 3-11\]](#) O. Y. Kirillova, [\[7, pp. 60-67\]](#) S. N. Kovalenko, [\[8, pp. 109-119\]](#) N. S. Matveeva, [\[10, pp. 505-521\]](#) L. N. Pankova, [\[11, pp. 87-90\]](#) A. L. Petelin, [\[12, pp. 59-63; 13, pp. 40-42\]](#) E. K. Salamov, [\[15, pp. 174-179\]](#) N. S. Samsonova, [\[16, pp. 878-884\]](#) E. V. Sergeeva, [\[17, pp. 37-38\]](#) V. V. Veselov, [\[20, pp. 158-161\]](#) T. D. Zavyalova, [\[23, pp. 111-121\]](#) as well as some other scientists, focus on the organization and implementation of public control measures in relation to certain types of state and municipal procurement. However, today in the Russian scientific and educational literature there are no works devoted to a comprehensive study of the entire set of problems that impede the organization and implementation of public control measures in the field of state and municipal procurement. This is largely due to the reluctance of public authorities to report to civil society regarding the legality, efficiency and effectiveness of spending budget funds during public procurement in Russia.

The relevance and scientific novelty of this work lies in the development and justification of a system of measures to resolve a set of problems identified and formalized during the study that impede the optimal implementation of public control of public procurement.

What is the main research problem that motivated us to write this scientific work?

The essence of this problem is that state and municipal procurement in the Russian Federation is carried out with great violations of current legislation, which is confirmed by both scientific and practical research, including those discussed in this article [\[7, p. 60-67; 8, p. 109-119\]](#) and the sociological surveys we conducted in 2024, indicating that the citizens of the country consider; a) the area of public procurement is the area of public administration most susceptible to corruption (38% of respondents); b) that during public procurement budget funds are not spent effectively - this is confirmed by the overestimation of the cost of goods, works and services purchased during procurement above their average market value (40% of respondents); c) that for a number of nomenclature items, purchases are carried out without justification - this is expressed in the fact that the goods, works and services purchased for them were not initially included in the expenditure side of budgets of one level or another, but are financed from various emergency items of these budgets (31% of respondents). (Table 1)

Table 1. Results of a survey of 1,500 respondents from 80 constituent entities of the Russian Federation regarding modern problems in organizing and conducting public procurement, conducted in January 2024

NºNº	Name of the question	Yes	(in	No (in 5)	Refrained	from
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		%)		answering (%)
1.	Do you consider the area of public procurement to be the most susceptible area of public administration to corruption?	38	36	26
2.	Are funds spent effectively during public procurement?	21	40	39
3.	Are public procurements always justified in terms of expediency?	20	31	49
4.	Have you personally encountered violations of legal norms during public procurement?	11	10	79

In addition, we analyzed the dynamics of identified crimes in the field of state and municipal procurement in the Russian Federation (Articles 200.4, 200.5, 200.6 of the Criminal Code of the Russian Federation) and established the growth of this type of crime during 2019-2023. (Table 2)

Table 2. Dynamics of changes in the number of crimes in the field of state and municipal procurement in the Russian Federation in 2019-2023

Article of the Criminal Code of the Russian Federation	Number of crimes in 2019 (basic level in calculations)	Number of crimes in 2020	Number of crimes in 2021	Number of crimes in 2022	Number of crimes in 2023
200.4	100%	102%	103,5%	109%	116%
200.5	100%	101,7%	103%	106%	107,5%
200.6	100%	102%	103,9	105,2%	107,8%

This research problem consists of a number of separate research problems, which were investigated in this scientific work: a) the lack of consolidation of the institution of public control in the Constitution of the Russian Federation; b) the absence in the legislation on public control and procurement legislation of any mention of the possibility of organizing and conducting public control activities; c) the poor development in the Russian scientific legal doctrine and Russian legislation of specific forms, methods and types of public control measures in relation to public procurement; d) the lack of real powers among subjects of public control; e) the lack of provisions in criminal and administrative legislation for the norms of legal responsibility for counteracting the legitimate activities of subjects of public control when carrying out public control measures in relation to public procurement; f) the lack of an organizational, technical, material and property base among subjects of public control in Russia sufficient to exercise public control in relation to public procurement; g) practically zero use in Russia of foreign experience of civil society control over public procurement.

The following scientific objectives can be highlighted: a) substantiation of the role and

place of the institute of public control in the system of legal guarantees for the implementation, protection and defense of not only the system of constitutional principles, but also the entire system of human and civil rights and freedoms, rights and legitimate interests of public associations and other non-governmental non-profit organizations; b) analysis of various points of view in scientific and educational literature regarding the possibilities and limits of public control in the sphere of public procurement; c) substantiation of the role and place of public procurement in the system of public control objects; d) formalization and analysis of the main problems hindering the organization and implementation of public control in the sphere of public procurement; d) development and substantiation of a system of measures to resolve the above-mentioned problems.

Methods and methodological basis of the research.

In the course of the scientific research, a number of methods were used: formal-logical; comparative legal; historical and legal; statistical; sociological; methods of financial analysis; method of studying specific legal situations. The research materials were the above-mentioned doctrinal sources of a number of authors devoted to the organization and implementation of public control measures, including in relation to certain types of state and municipal procurement, the results of sociological studies regarding existing problems in the field of procurement in Russia, as well as statistical data on the dynamics crime in public procurement.

Main text.

The Constitution of the Russian Federation has enshrined the legal status of the multinational people of Russia as the bearer of sovereignty and the sole source of power in the state, exercising its powers both directly (for example, through the institutions of free elections and referendums) and indirectly (in particular, through the activities of numerous state authorities, local government bodies and their officials). This high legal status of the people of Russia determines the highest value in the state of man, his rights and freedoms (this is a kind of ideological quintessence of the Constitution of the Russian Federation), [\[4, p. 1\]](#) which generally corresponds to global trends, according to which human rights and freedoms are an integral attribute of any democratic state. [\[5, c. 193-106\]](#) At the same time, the main goal of the organization and activities of public authorities in the Russian Federation is to assist in the implementation of human and civil rights and freedoms, as well as to implement measures to protect them and protect them from any unlawful attacks.

However, constitutional principles (primarily democracy and participation of Russian citizens in the management of state affairs), as well as the entire system of human and civil rights and freedoms, the rights and legitimate interests of public associations and other non-governmental non-profit organizations, require a system of legal guarantees that ensure their implementation, protection and defense from illegal encroachments. In this regard, a number of authors rightly note that without the specified legal guarantees, the above-mentioned system of principles, rights and freedoms enshrined in the Constitution is largely formal, declarative in nature, questionable from the point of view of its practical implementation. [\[1, c. 12-13; 4, c. 1-2\]](#)

This system includes: a) the constitutional ban on the seizure of power and the illegal appropriation of power under the threat of bringing the perpetrators to legal responsibility (up to and including criminal penalties); b) the system of checks and balances that covers the entire apparatus of public power and thanks to which the risks of concentrating all

power in the hands of any public authority or its official are minimized; c) the bodies of constitutional control and supervision, including the head of state, the Constitutional Court of the Russian Federation, the Supreme Court of the Russian Federation, the Government of the Russian Federation, the Federal Assembly of the Russian Federation; d) the system of civil society institutions.

The most important institution of civil society is public control, through which citizens of the Russian Federation, public associations (and other non-governmental non-profit organizations) have the opportunity to participate in monitoring the activities, acts and decisions of government bodies, local governments, state and municipal organizations, other bodies and organizations that exercise certain public powers on the basis of federal laws.

Russian legislation on public control, in particular, the Federal Law dated of 21/07 2014 № 212-FL "On the Fundamentals of Public Control in the Russian Federation" did not establish a list of objects of public control (unlike the list of subjects that was enshrined in this Federal Law, and it is open in nature and can be supplemented by other federal laws). In addition, the legislation does not define an exhaustive list of characteristics by which an object of public control can be identified.

This circumstance gives rise to certain difficulties in identifying objects of public control. One of these objects is public procurement. Russian legislation does not operate with the concept of "public procurement". This is due to the fact that the very concept of "public power" was incorporated into the Constitution of the Russian Federation relatively recently - with the adoption of amendments in 2020. At the same time, by the apparatus of public power, the Basic Law of the country understands the totality of federal and regional government bodies, as well as local government bodies. Legislation regulating issues of state and municipal procurement was formed before the adoption of the above-mentioned amendments to the Constitution of the Russian Federation (for example, Federal Law dated of 05.04.2013 № 44-FL "On the contract system in the field of procurement of goods, works, services to meet state and municipal needs"). As a result, it operates with a more complex concept of "purchase of goods, works, services to meet state and municipal needs".

A detailed analysis of the above-mentioned Federal Law shows that on the basis of this regulatory act, procurement is regulated both for the needs of federal and regional government bodies, local governments, and for the needs of budget recipients (federal, regional and municipal budgets). Such budget recipients, for example, may include a school that is a federal, regional or municipal educational institution. The entire specified set of procurements forms the concept of "public procurement".

In the Russian scientific and educational literature there is no consensus regarding the concept, grounds and limits of the organization and implementation of public control in the field of public procurement in the Russian Federation.

Most scientists agree that public control in the field of public procurement should be carried out.

However, there are several points of view regarding the limits of public control measures in the field of procurement.

Thus, a number of authors consider that control by civil society is possible over the legality of the public procurement mechanism. [\[8, c. 109-119\]](#) According to these scientists, the purpose of public control in the field of public procurement is, on the one hand, to combat

corruption in their organization and conduct, and, on the other hand, to ensure the implementation of the principle of legality, that is, public procurement must be carried out on time, in the manner prescribed current legislation. It should be noted that the mentioned opinion of these scientists is important for understanding the importance of public control of public procurement, during which the fight against corruption and ensuring the rule of law is carried out not only through the activities of public control and supervision bodies (for example, public authorities authorized to carry out control measures in relation to implemented forms of public procurement), but also through the activities of the relevant civil society institution - subjects of public control.

However, the role of public control should not be limited only to mechanical verification of compliance with the public procurement mechanism (for example, deadlines, stages, documents drawn up, etc.).

With the above approach, the attention of subjects of public control eludes the questions of, on the one hand, the validity and appropriateness of each specific public procurement procedure, and on the other hand, their effectiveness and efficiency. For example, formally, if the budget of a municipality plans to repair the road surface on a specific section of the road and the public procurement events took place on time, and the contractor for these works has been identified, then there are no violations. However, if the specified repair is carried out at a time when the old road surface should still be fully functional, or a public inspection carried out by a subject of public control has shown that the existing road surface complies with legal requirements and other regulatory requirements (in particular, in terms of quality, wear, etc.), then the question arises about the validity and expediency of such public procurement. Consequently, the contract for repairs contained information that did not correspond to reality regarding the fact that the road surface needed repair. Thus, there is an offense. Law enforcement agencies must check whether this offense relates to administrative or criminal offenses, with the subsequent bringing of the perpetrators to liability established by law.

In addition, as a result of this offense, budgetary funds were spent that could have been used to finance other justified and expedient expenses, for example, the purchase of medicines for municipal medical institutions, or the repair of road surfaces in those places of municipal roads that really need repair and renovation in accordance with the law, as well as duly approved building codes and regulations.

In addition, public control measures make it possible to understand to what extent, based on the results of public procurement, goods, works and services were purchased at the real market price, or whether their price was many times inflated, which implies a significant corruption component. Although, at the same time, all applications submitted and considered during public procurement could contain a deliberately inflated cost of goods, works and services (and a formal check of the compliance of the tendering mechanism with the law would not have revealed anything).

A number of authors consider that only the activities, acts and decisions of public authorities and other participants in public procurement exercising certain public powers can be subject to public control. [\[13, c. 40-42\]](#) These authors consider that public control entities do not have the right to check other participants in public procurement (for example, suppliers of goods, works and services).

The authors base this opinion on the fact that the Federal Law dated of 21.07.2014 № 212-FL "On the Fundamentals of Public Control in the Russian Federation" allows for public

control measures to be carried out only in relation to the activities, acts and decisions of public authorities, organizations that are created in the form state and municipal (institutions and enterprises), as well as in other forms, but if they are specifically authorized by federal laws to implement certain public powers (for example, to produce weapons and ammunition for the needs of the Ministry of Defense of the Russian Federation).

In our opinion, a public control event can and should cover the entire public procurement procedure from start to finish, affecting all participants in this procedure (regardless of their legal status). Since we are talking about meeting state or municipal needs, then, in our opinion, the activities, acts and decisions of the supplier (performer) during the organization and conduct of the public procurement procedure are covered by the concept of "implementation of certain public powers".

At the same time, representatives of the subject of public control when carrying out public control measures in relation to public procurement should be given a set of real rights to exercise public control. Currently, these rights are not detailed in the legislation on public control. Federal Law dated of 21.07.2014 № 212-FL "On the Fundamentals of Public Control in the Russian Federation" contains only a set of general rights of subjects of public control, for example, regarding the possibility of requesting information and documents from public authorities and other objects of public control. Subjects of public control can also contact, if there are suspicions of crimes and offenses committed by participants in public procurement, the police and other law enforcement agencies, or higher public authorities to which the organizers of public procurement are subordinate.

Some scientists consider that public control should be active in nature, when its subjects must identify and suppress offenses and crimes committed by all participants in public procurement. [\[20, c. 158-161\]](#) This opinion is important because it allows us to understand the limits of public control in the field of public procurement.

In our opinion, public control in the field of public procurement should also extend to checking the validity, appropriateness, efficiency and effectiveness of public procurement, since, otherwise, it violates the rights and freedoms of the country's citizens (as we have already noted earlier). That is, during a public control event, its subjects must analyze the public procurement procedure not only from the point of view of checking the legality of the order and timing of its implementation, but also the validity and feasibility of its implementation at a given time and for the specified cost, comparing the real costs of the purchase of a given product, work or service at the current market price and market conditions.

In this regard, it is necessary to establish a mechanism for assessing the validity, appropriateness, efficiency and effectiveness of state and municipal procurement both by state control bodies and by public control bodies. This mechanism must be established in the legislation on public procurement, as well as in the legislation on public control (for example, in the Federal Law dated of 21.07.2014 № 212-FL "On the Fundamentals of Public Control in the Russian Federation").

This mechanism should include, for example: a) the algorithms for comparing prices of goods, works and services purchased during public procurement with average market prices for them in a given period of time; b) the algorithms that make it possible to establish the fact of compliance with the targeted nature of the use of funds from the budgets of certain levels when conducting specific public procurements; c) the obligation to include the

specified mechanism in contracts concluded based on the results of state or municipal procurements in order to provide representatives of subjects of public control with free access to contract documentation.

Thus, public procurement occupies an important place in the system of objects of public control, representing a complex of various types of activities, acts and decisions of public procurement participants aimed at their organization and implementation.

Why is this object of public control so important?

Firstly, public procurement in the Russian Federation accounts for a significant percentage of the expenditure part of the federal, regional and local budgets, so through these procedures any goods, works and services are purchased for state and municipal needs, including the needs of all recipients of the above types of budgets.

Secondly, public procurement procedures involve all public authorities (functioning as a legal entity), as well as state and municipal organizations, as well as other bodies and organizations that exercise certain public powers on the basis of federal laws. In turn, suppliers of goods and services, performers of work for state and municipal needs can be, in particular, any types of legal entities registered in accordance with Russian legislation (regardless of their legal form and form of ownership).

Thirdly, purchased goods, services, works for public needs in one way or another affect the rights and freedoms of all individuals, as well as public associations and other non-governmental non-profit organizations on the territory of the Russian Federation, since the activities of public authorities are ensured through the implementation of public procurement, other bodies and organizations exercising certain public powers. For example, medicines are purchased for citizens of the country who have the right to receive them free of charge from the state at the expense of federal and regional budgets. Also, through the implementation of public procurement procedures, state and municipal institutions and healthcare enterprises, education, science, culture, physical culture and sports, recreational and health institutions, housing and communal services facilities that are in state or municipal ownership, etc. are provided with everything necessary.

However, the implementation of public control in the field of public procurement is associated with numerous problems, including the following:

Firstly, a significant problem is the fact that the country's Constitution does not in any way define the institution of public control, and therefore the limits of its implementation are unclear.

The solution to the problem is seen in the formalization of this institution of civil society in the Basic Law of the country, defining in it a list of its objects, including public procurement. In addition, the Constitution needs to detail the mechanism of interaction between subjects of public control with public authorities and other objects of public control.

Secondly, a major problem is the fact that the legislation on public control, in particular, the Federal Law dated of 21.07.2014 № 212-FL "On the Fundamentals of Public Control in the Russian Federation", as we noted earlier, does not establish a list of objects of public control, in particular, public procurement (purchase of goods, works, services to meet state and municipal needs) is not mentioned among the objects of public control. In turn, legislation regulating public procurement (purchase of goods, works, services to meet state

and municipal needs), for example, Federal Law dated of 05.04.2013 № 44-FL "On the contract system in the field of procurement of goods, works, services to ensure state and municipal needs" also says nothing about the possibility of organizing and conducting public control of public procurement procedures.

The solution to this problem is seen, on the one hand, in enshrining in the legislation on public control an exhaustive list of objects of public control, or an exhaustive list of features identifying them. As an alternative, and in view of the extreme importance of the institution of public procurement, it is necessary to explicitly stipulate in the legislation on public control that public relations associated with the organization and conduct of public procurement (participation in them) are a type of object of public control. On the other hand, the institution of public control should be formalized in the legislation on public procurement, in particular, in the Federal Law dated of 05.04.2013 № 44-FL "On the contract system in the field of procurement of goods, works, services to meet state and municipal needs", for example, by adding it to Chapter 5 (Control in the field of procurement) as Article 104.1 (Public control in the field of procurement). This article should detail the grounds and limits of the organization and implementation of public control in the field of procurement, indicating what types, forms and methods of its activities are used by subjects of public control in this area.

Thirdly, a significant problem is the fact that in the Russian scientific and educational literature, as well as in legislation, specific forms, methods and types of public control measures in the field of public procurement have not been developed. Currently, full-fledged control over public procurement is possible only from the state control bodies, including from law enforcement agencies, which is wrong (since it turns out that there is no full-fledged control by civil society over the procurement sphere). This is due to the fact that, as we noted earlier, in the scientific legal doctrine there is no consensus regarding the grounds and limits of the implementation of this institution of civil society in the field of public procurement. The solution to this problem is seen in the order of the Civic Chamber of the Russian Federation to carry out the organization of scientific and practical research in terms of the development and subsequent implementation into Russian legislation on public control and on public procurement of specific forms, methods and types of public control measures in the field of public procurement. The relevant federal ministries (for example, justice) should also be involved in this work.

Fourthly, a major problem is the fact that public control entities essentially lack any real authority to carry out their activities in the area of public procurement.

Such powers that should be assigned to subjects of public control include the following: the possibility of suspending public procurement procedures if the actions, acts and decisions of their participants contain signs of a crime; the possibility of imposing an administrative fine on guilty persons (for this, appropriate changes must be made to the Code of the Russian Federation on Administrative Offenses, as well as to the legislation on public procurement).

Fifthly, a significant problem is the fact that Russian criminal and administrative legislation does not contain criminal law and administrative law provisions providing for measures of criminal and administrative law liability in relation to guilty persons who opposed the legitimate activities of subjects of public control. At the same time, the implementation of these actions in relation to these representatives carrying out public control measures in the field of public procurement should be punished only under criminal law.

Sixthly, a major problem is the fact that subjects of public control have a weak

organizational, technical and material and property base, which is not sufficient to exercise public control in relation to public procurement. In addition, these entities poorly use modern information and communication technologies. And this circumstance is especially important, since public procurement procedures are carried out using the Internet and modern information and communication technologies. The solution to this problem is seen in instructing the Government of the Russian Federation to develop and adopt federal programs dedicated to the development of the organizational, technical, material and property base of subjects of public control, as well as their use of modern information and communication technologies. These federal programs should be developed after agreement with the Public Chamber of the Russian Federation.

Seventh, a significant problem is the fact that in Russia the positive foreign experience of participation of civil society institutions in monitoring public procurement is poorly used. There is particularly rich similar experience in Switzerland, the USA and the countries of the European Union. Analysis and adaptation of this experience to Russian realities should be entrusted to the country's Public Chamber. Adapted experience needs to be introduced into legislation on public control, as well as legislation on public procurement.

Conclusion.

In the course of the scientific research, we made a number of conclusions, including the following:

1. The Institute of Public Control in the Russian Federation acts as the most important legal guarantee for the implementation, protection and protection of both the system of constitutional principles (primarily democracy and the participation of Russian citizens in the management of state affairs), and the entire system of rights and freedoms of man and citizen, as well as rights and legitimate interests of public associations and non-governmental non-profit organizations, since it allows citizens and the above-mentioned types of legal entities to participate in organizing and conducting activities to control the activities, acts and decisions of government bodies, local governments, state and municipal organizations, other bodies and organizations that exercise certain public powers on the basis of federal laws.
2. Despite the fact that many Russian scientists consider it acceptable and necessary for the functioning of public control in the field of public procurement, in Russian educational and scientific literature there is no consensus regarding the limits of public control measures: some authors consider that control of civil society is possible based on the legality of the mechanism for conducting public procurement; a number of authors note that only the activities, acts and decisions of public authorities and other participants in public procurement exercising certain public powers can be subject to public control; other scientists note that public control should be active in nature, when its subjects must identify and suppress offenses and crimes committed by all participants in public procurement. In our opinion, public control in the field of public procurement should also extend to checking the validity, appropriateness, efficiency and effectiveness of public procurement, since, otherwise, it violates the rights and freedoms of the country's citizens.
3. Public procurement occupies a crucial place in the system of objects of public control, since: a) their total volume constitutes a significant percentage of the expenditure portion of the federal, regional and municipal budgets in Russia; b) not only public authorities, but also state and municipal organizations, as well as other bodies and organizations that exercise certain public powers on the basis of federal laws, take part in the organization

and conduct of public procurement; c) the efficiency and effectiveness of public procurement directly affects the rights and freedoms of man and citizen, since through their implementation the procurement of goods, works and services is carried out both for the functioning of the public administration system and numerous social institutions, enterprises and organizations (for example, state and municipal schools, hospitals, universities, etc.).

4. The organization and conduct of public control in the field of public procurement is associated with numerous problems, including the following: a) the lack of enshrinement of this institution of civil society in the Russian Constitution; b) the absence in the legislation on public control and legislation on procurement of any mention of the possibility of organizing and conducting public control activities (public procurement is not identified as a separate object of public control); c) the lack of development in scientific legal doctrine and legislation of specific forms, methods and types of public control measures in relation to public procurement; г) отсутствие реальных полномочий у субъектов общественного контроля; e) the lack of development in criminal and administrative legislation of norms of legal responsibility for counteracting the legitimate activities of subjects of public control when carrying out public control measures in relation to public procurement; f) the presence of the subjects of public control with an organizational, technical, material and property base that is not sufficient to exercise public control in relation to public procurement; g) the poor use in the practice of public control over public procurement in Russia of positive foreign experience in civil society control over public procurement.

5. Resolving these problems requires the development and implementation of a system of measures, in particular: a) incorporation of the institution of public control into the Constitution of Russia; b) securing the possibility of its implementation in relation to public procurement in legislation; c) development, under the leadership of the country's Public Chamber, of a system of specific forms, methods and types of public control measures in this area (with their subsequent implementation into legislation); d) assigning a system of real powers to subjects of public control (including the right to suspend public procurement procedures, impose an administrative fine on public procurement participants guilty of violating the law); e) establishing in the Criminal Code of the Russian Federation and the Code of the Russian Federation on Administrative Offenses a system of measures of criminal and administrative liability for counteracting the legitimate activities of subjects of public control; f) strengthening the organizational, technical, material and technical base of public control; g) its optimization based on positive foreign experience.

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Результаты процедуры рецензирования статьи

В связи с политикой двойного слепого рецензирования личность рецензента не раскрывается.

Со списком рецензентов издательства можно ознакомиться [здесь](#).

Предметом исследования в представленной на рецензирование статье является, как это следует из ее наименования, общественный контроль за публичными закупками. Заявленные границы исследования соблюдены ученым.

Методология исследования раскрыта: "В ходе научного исследования был использован ряд методов: формально-логический; сравнительно-правовой; историко-правовой; статистический; социологический; метод финансового анализа; метод изучения конкретных правовых ситуаций".

Актуальность избранной автором темы исследования несомненна и обосновывается им следующим образом: "... государственные и муниципальные закупки в Российской Федерации осуществляются с грубыми нарушениями действующего законодательства, что подтверждается как теоретическими, так и эмпирическими исследованиями, в том числе приведенными в данной статье [7, с. 60-67; 8, с. 109-119] и проведенными нами социологическими опросами в 2024 году, что свидетельствует о следующей позиции опрошенных: а) сферу государственных закупок считают сферой государственного управления, наиболее подверженной коррупции 38% опрошенных; б) при проведении государственных закупок бюджетные средства расходуются неэффективно - это подтверждается завышением стоимости товаров, работ и услуг, приобретенных в ходе закупок выше их среднерыночной стоимости, на что указали 40% респондентов; в) по ряду номенклатурных позиций закупки осуществляются без обоснования - это выражается в том, что товары, работы и услуги приобретаются по среднерыночной стоимости (40% респондентов)". Раскрыта степень изученности поднимаемых в статье проблем: "Общие фундаментальные обзоры организации и осуществления общественного контроля в Российской Федерации широко изучены в работах Н. А. Белешева, [1, с. 12-13] Н. С. Лисиной, [9, с. 32-40] А. С. Прудникова, [14, с. 50-53] А. К. Сисакяна, [18, с. 12-13] Н.С. Лисиной. 29-35] А. А. Соловей, [19, с. 38-41] Ю. Залесного, [21, с. 1; 22, с. 1], а также ряда других авторов. Значительное внимание данным проблемам уделяется в работах Р. Ю. Буримова, [2, с. 103-111] Л. В. Давыдовой, [3, с. 36-43] В. В. Кикавца, [6, с. 3-11] О. Ю. Кирилловой, [7, с. 60-67] С. Н. Коваленко, [8, с. 109-119], Н. С. Матвеева, [10, с. 505-521], Л. Н. Панкова, [11, с. 87-90], А. Л. Петелин, [12, с. 59-63; 13, с. 40-42], Е. К. Саламов, [15, с. 174-179], Н. С. Самсонова, [16, с. 878-884] Е. В. Сергеева [17, с. 37-38], В. В. Веселов [20, с. 158-161], Т. Д. Завьялова [23, с. 111-121]" и др.

Научная новизна работы проявляется в ряде заключений автора: "Несмотря на то, что многие российские ученые считают приемлемым и необходимым общественный контроль в сфере государственных закупок, в российской учебной и научной литературе нет единого мнения относительно пределов соответствующих мер общественного контроля... . Полагаем, общественный контроль в сфере государственных закупок также должен распространяться на проверку обоснованности, целесообразности, оперативности и результативности государственных закупок, поскольку в противном случае это нарушает права и свободы граждан страны"; "Государственные закупки занимают важнейшее

место в системе объектов общественного контроля, поскольку: а) их общий объем составляет значительный процент расходной части федерального, регионального и муниципального бюджетов в России; б) в организации и проведении государственных закупок принимают участие не только органы государственной власти, но и государственные и муниципальные организации, а также иные органы и организации, осуществляющие определенные публичные полномочия на основании федеральных законов; в) эффективность и результативность государственных закупок напрямую влияет на права и свободы человека и гражданина, поскольку посредством их осуществления осуществляются закупки товаров, работ и услуг в том числе для системы государственного управления и многочисленных социальных институтов, предприятий и организаций (например, государственных и муниципальных школ, больниц, университетов и т.д.); "Организация и проведение общественного контроля в сфере государственных закупок связаны с многочисленными проблемами, в том числе: а) отсутствие закрепления этого института гражданского общества в Конституции Российской Федерации; б) отсутствие в законодательстве об общественном контроле и законодательстве о закупках какого-либо упоминания о возможности организации и проведения общественного контроля (общественные закупки не определены в качестве отдельного объекта государственного управления); в) в научной доктрине и законодательстве не определены конкретные формы, методы и типы общественного контроля, меры в отношении публичных закупок; г) отсутствие реальных полномочий у субъектов общественного контроля; е) отсутствие в уголовном и административном законодательствах норм об юридической ответственности за противодействие законной деятельности субъектов общественного контроля при осуществлении общественного контроля, мероприятий в отношении публичных закупок; е) отсутствие у субъектов общественного контроля необходимой организационной, технической, материальной и имущественной баз, что является препятствием при осуществлении общественного контроля в отношении государственных закупок; г) слабое использование в практике общественного контроля за государственными закупками в России позитивного зарубежного опыта в области контроля гражданского общества над государственными закупками" и др. Таким образом, статья вносит определенный вклад в развитие отечественной правовой науки и, безусловно, заслуживает внимания потенциальных читателей.

Научный стиль исследования выдержан автором в полной мере.

Структура работы логична. Во вводной части статьи ученый обосновывает актуальность избранной им темы исследования, раскрывает его методологию. В основной части работы автор исследует возможности общественного контроля за публичными закупками, выявляет соответствующие проблемы и предлагает пути их решения. В заключительной части работы содержатся выводы по результатам проведенного исследования.

Содержание статьи соответствует ее наименованию и не вызывает особых нареканий.

Библиография исследования представлена 23 источниками (научными статьями), в том числе на английском языке. С формальной и фактической точек зрения этого достаточно. Автору удалось раскрыть тему исследования с необходимой полнотой и глубиной.

Апелляция к оппонентам имеется, как общая, так и частная (С. Н. Коваленко, А. В. Сабельникова, А. Л. Петелин и др.), и вполне достаточна. Научная дискуссия ведется автором корректно. Положения работы обоснованы в должной степени и проиллюстрированы примерами.

Выводы по результатам проведенного исследования имеются ("1. Институт общественного контроля в Российской Федерации выступает важнейшей правовой

гарантией реализации, охраны и защиты как системы конституционных принципов (прежде всего демократии и участия граждан России в управлении делами государства), так и всей системы прав и свобод человека и гражданина, а также прав и законных интересов общественных объединений и негосударственных некоммерческих организаций, поскольку позволяет гражданам и указанным выше видам юридических лиц участвовать в организации и проведении мероприятий по контролю за деятельностью, актами и решениями органов государственной власти, органов местного самоуправления, государственных и муниципальных организаций, иных органов и организаций, осуществляющих определенные государственные полномочия на основании федеральных законов. 2. Несмотря на то, что многие российские ученые считают приемлемым и необходимым общественный контроль в сфере государственных закупок, в российской учебной и научной литературе нет единого мнения относительно пределов мер общественного контроля... . Полагаем, общественный контроль в сфере государственных закупок также должен распространяться на проверку обоснованности, целесообразности, оперативности и результативности государственных закупок, поскольку в противном случае это нарушает права и свободы граждан страны.

3. Государственные закупки занимают важнейшее место в системе объектов общественного контроля, поскольку: а) их общий объем составляет значительный процент расходной части федерального, регионального и муниципального бюджетов в России; б) в организации и проведении государственных закупок принимают участие не только органы государственной власти, но и государственные и муниципальные организации, а также иные органы и организации, осуществляющие определенные публичные полномочия на основании федеральных законов; в) эффективность и результативность государственных закупок напрямую влияет на права и свободы человека и гражданина, поскольку посредством их осуществления осуществляются закупки товаров, работ и услуг в том числе для системы государственного управления и многочисленных социальных институтов, предприятий и организаций (например, государственных и муниципальных школ, больниц, университетов и т.д.).

4. Организация и проведение общественного контроля в сфере государственных закупок связаны с многочисленными проблемами, в том числе: а) отсутствие закрепления этого института гражданского общества в Конституции Российской Федерации; б) отсутствие в законодательстве об общественном контроле и законодательстве о закупках какого-либо упоминания о возможности организации и проведения общественного контроля (общественные закупки не определены в качестве отдельного объекта государственного управления); в) в научной доктрине и законодательстве не определены конкретные формы, методы и типы общественного контроля, меры в отношении публичных закупок; г) отсутствие реальных полномочий у субъектов общественного контроля; е) отсутствие в уголовном и административном законодательствах норм об юридической ответственности за противодействие законной деятельности субъектов общественного контроля при осуществлении общественного контроля, мероприятий в отношении публичных закупок; е) отсутствие у субъектов общественного контроля необходимой организационной, технической, материальной и имущественной баз, что является препятствием при осуществлении общественного контроля в отношении государственных закупок; г) слабое использование в практике общественного контроля за государственными закупками в России позитивного зарубежного опыта в области контроля гражданского общества над государственными закупками" и др.), они четкие, конкретные, обладают свойствами достоверности, обоснованности и, несомненно, заслуживают внимания научного сообщества.

Интерес читательской аудитории к представленной на рецензирование статье может быть проявлен прежде всего со стороны специалистов в сфере конституционного права

и административного права.