CZU 342.9(478)
DOI https://doi.org/10.52388/2345-1971.2022.e1.01

REFLECTIONS ON DEFICIENCIES IN CONTRAVENTIAL REGULATIONS IN THE FIELD OF PUBLIC PROCUREMENT IN THE REPUBLIC OF MOLDOVA

Gheorghe AVORNIC
Habilitated doctor in law, university professor,
University of European Political and Economic Studies "Constantin Stere",
Chisinau, Republic of Moldova
e-mail: *avornic@yahoo.fr*
https://orcid.org/0000-0002-2673-4331

Dorina GALAMAGA
PhD student, University of European Political and Economic Studies "Constantin Stere",
Chișinau, Republic of Moldova
e-mail: *dorina.galamaga@gmail.com*
https://orcid.org/0000-0002-9207-6277

This publication focuses on the analysis of national legislation on contravention liability in the field of public procurement in order to identify regulatory deficiencies, as well as the necessary interventions to improve legal provisions in the field of public procurement, in particular contravention liability in this area. Currently, the mechanism of contravention liability related to the public procurement system in the Republic of Moldova is non-functional, which determines the carrying out of a research in terms of insuring the legality and integrity. It is noted that the regulatory deficiencies and the lack of the mechanism of ensuring contravention liability in the public procurement process, are risk factors that lead to the non-application of coercive measures in public procurement and to the generation of fraudand corruption risks. This article presents a theoretical analysis of the notions and defective regulations aimed at contravention liability in public procurement, as well as their impact affecting both the national public procurement system, including integrity and public interest.

Keywords: *contravention liability, public procurement, contravention, risk factors, risk of fraud and corruption.*

REFLECȚII PRIVIND DEFICIENȚELE NORMATIVE CONTRAVENȚIONALE ÎN DOMENIUL ACHIZIȚIILOR PUBLICE DIN REPUBLICA MOLDOVA

Publicaţia de faţă, se axează pe analiza legislației naţionale privind răspunderea contravenţională în domeniul achizițiilor publice în vederea identificării deficienţelor normative, precum şi intervențiile necesare de îmbunătățire a reglementărilor din domeniul achizițiilor publice, în special răspunderea contravenţională în acest domeniu. În prezent, mecanismul răspunderii contravenționale aferent sistemului achizițiilor publice în Republica Moldova este nefuncțional, fapt ce determină efectuarea unei cercetări prin prisma asigurării legalității și integrității. Se remarcă faptul că deficiențele normative și lipsa mecanismului de atragere la răspundere contravenţională în procesul de achiziție publică, reprezintă factori de risc ce duc la neaplicarea măsurilor de constrângere contravenţională în achiziții publice și la generarea riscurilor de fraudă și corupție. Prezentul articol prezintă o analiză teoretică a noțiunilor și reglementărilor defectuoase ce vizează răspunderea contravenţională în achiziții publice, precum și impactul acestora ce afectează sistemul achizițiilor publice național, inclusiv integritatea și interesul public.

Cuvinte-cheie: *răspundere contravenţională, achiziții publice, contravenție, factori de risc, risc de fraudă și corupție.*

RÉFLEXIONS SUR LES LACUNES NORMATIVES EN MATIÈRE DE CONTRAVENTION DANS LE DOMAINE DES MARCHÉS PUBLICS EN RÉPUBLIQUE DE MOLDOVA

La présente publication se concentre sur l'analyse de la législation nationale sur la responsabilité en matière de contravention dans le domaine des marchés publics afin d'identifier les lacunes normatives, ainsi que les interventions nécessaires pour améliorer la réglementation dans le domaine des marchés publics, en particulier la responsabilité en matière de contravention dans ce domaine. Actuellement, le mécanisme de responsabilité en cas de contravention lié au système de passation des marchés publics en République de Moldova est inopérant, ce qui détermine la conduite d'une recherche afin d'assurer la légalité et l'intégrité. Il est à noter que les lacunes normatives et l'absence de mécanisme de responsabilité en cas de contravention dans le processus de passation des marchés publics représentent des facteurs de risque qui conduisent à la non-application des mesures de coercition en matière de contravention dans les marchés publics et à générer des risques de fraude et de corruption. Cet article présente une analyse théorique des notions et des conceptions erronées concernant la responsabilité en cas de contravention dans les marchés publics, ainsi que leur impact sur le système national de passation des marchés publics, y compris l'intégrité et l'intérêt public.

Mots-clés: *responsabilité en cas de contravention, marchés publics, contravention, facteurs de risque, risque de fraude et de corruption.*

РАЗМЫШЛЕНИЯ О НОРМАТИВНЫХ НЕДОСТАТКАХ В СФЕРЕ ГОСУДАРСТВЕННЫХ ЗАКУПОК В РЕСПУБЛИКЕ МОЛДОВА

Данная публикация посвящена анализу национального законодательства об ответственности за нарушения в сфере государственных закупок с целью выявления нормативных недостатков, а также необходимым мероприятиям по совершенствованию правил в сфере государственных закупок, в частности, ответственности за правонарушения в этой области. В настоящее время механизм ответственности за нарушение, связанное с системой государственных закупок в Республике Молдова, является нефункциональным, что определяет проведение исследования с точки зрения обеспечения законности и целостности. Отмечается, что нормативные недостатки и отсутствие механизма привлечения к ответственности за нарушения в процессе государственных закупок, представляют собой факторы риска, которые приводят к неприменению мер за правонарушения в государственных закупках и к мошенничеству и коррупции. В данной статье представлен теоретический анализ нормативных актов, касающихся ответственности за нарушения при государственных закупках, а также их влияния, как на национальную систему государственных закупок, так и на общественные интересы.

Ключевые слова: *ответственность за нарушение, государственные закупки, правонарушение, факторы риска, риск мошенничества и коррупции*

Introduction

Understanding and counteracting the particularities and legislative deficiencies of contraventional liability in the field of public procurement in order to strengthen integrity in public procurement, constitutes an important and current objective in preventing and combating corruption in this field.

As a result of the changes in the Criminal Code, through the Law for the amendment and completion of some legislative acts, No. 295 of December 21, 2017, *Official Gazette, 2018, no. 7-17 art. 58; No. 295 of December 21, 2017*, omitted (*intentionally or not*) the public entity empowered to ascertain contraventions, conclude minutes and apply sanctions for violations admitted in the public procurement process. During the last years, this legislative deficiency is intensively discussed by several public institutions, such as: the Court of Accounts, the National Anticorruption Center and by representatives of civil society, but even today it has not been remedied, a fact that generates suspicions regarding the integrity representatives who regulate and promote policies in the field of public procurement, as well as their will to improve legislation in this field [24].

Research Methodology

In order to carry out a detailed research of the subject covered in this analysis, a number of methods were used, among which we mention: *the historical method* - applied to understand the evolution of the content of the legislative norms on public procurement and the Criminal Code, in order to identify the irregularities that appeared in the field of procurement public; *the logical method* – used as a method of rational knowledge of legal norms when studying the problems of contraventional liability in public procurement; *the analytical method* – used for the detailed evaluation of the rules and information related to the non-application of contraventional coercive measures in the field of public procurement, in order to find the main reasons generating the malfunctions of the public procurement system; *the method of drafting normative acts* - came up with proposals to complete and modify the rules of the Criminal Code; *the deductive method* – analyzed each rule and paragraph of the Code of Criminal Procedure, in order to deduce the reasons for the non-functioning of the mechanism for applying criminal sanctions. A series of textbooks and monographs, normative acts in force and articles in periodicals were consulted for the preparation of this study.

Research Content

According to the Development Strategy of the public procurement system for the years 2016-2020, approved by Government Decision no. 1332/2016, obtaining an efficient and credible public procurement system is one of the fundamental elements of the country's development process, at the same time ensuring the proper implementation of legal provisions in practice by reducing waste, fraud and corruption, thus strengthening the trust of citizens and the business environment.

Also, this normative act comes to contribute to the fulfillment of the objective established in the Government Strategy regarding public administration reform, to contribute, including the implementation of other reforms related to the development of the private market, businesses and *the rule of law*, etc., which, in the end must include a functional, competitive, accountable and transparent procurement system.

The public procurement system is an instrument of the state and represents an important element of the national economy. The purpose of this instrument is the legal, transparent, fair, non-discriminatory and efficient use of public money.

In the Republic of Moldova, the volume of public procurement is directly related to the GDP and, as a component of it, is constantly dynamic. According to statistical data, the share of public procurement in the GDP volume is about 4.25 - 4.38% (year 2019-2020). In 2020, the share of public procurement in the GDP volume registered a slight increase compared to the level of 2019 [19].

Moreover, it is also highlighted that purchases play an important role in the economy of the member states, holding an important percentage (approximately 16%) of the EU GDP [17, p. 61].

Referring initially to the term "public procurement" we reveal several doctrinal opinions. So, according to the author Nica Elvira "the process of obtaining products, services or works by an entity, hereinafter referred to as the contracting authority, in accordance with the legislation in force is called public procurement". The same author believes that "public procurement includes any activity that has a purpose and is meant to respond to a need, a requirement in the public sector and that involves spending public money from the state budget" [17, p. 61].

According to other authors, "the field of activity of public procurement is the supply of goods, works and services by the entities that offer sums of money from national, European or national and European public funds in return"[8, p. 11].

Law on public procurement No. 131 of July 3, 2015 (hereinafter - Law no. 131/2015), defines "*public procurement*" as "the procurement, through a public procurement contract, of goods, works or services by one or more contracting authorities from the economic operators selected by them, regardless of whether the goods, works or services are intended for a public purpose or not" [13].

In our opinion, a general definition of public procurement is the purchase of products, works or services from public money according to legal requirements, by a legal person defined as a contracting authority, by awarding a public acquisition contract. The process of organizing and carrying out public procurement procedures is a complex process, consisting of several phases/stages with the involvement of several actors and is characterized as one of the most vulnerable areas to the risks of fraud and corruption.

In that field, at the current stage, the national legislative framework in the field of public procurement is often brought back into discussion, a fact that represents an opportunity to regulate the deficiencies found over the last years, either in terms of the basic rules that operate in this field, either in terms of the institutional framework in order to improve the regulations. The field of public procurement has undergone a series of changes aimed at perfecting legal relations in public procurement.

Thus, starting from May 1, 2016, with the entry into force of Law no. 131/2015, Law no. 96-XVI of April 13, 2007 on public procurement, with subsequent additions and amendments. With the adoption of the current law, the public procurement system in the Republic of Moldova entered a new stage of development, harmonizing the primary national normative framework with *the community acquis*, in accordance with the commitments assumed by the Republic of Moldova towards the European Union with the ratification of Association Agreement between the Republic of Moldova, on the one hand, and the European Union and the European Atomic Energy Community and their member states, on the other hand, by Law no. 112 of July 2, 2014 [10].

In 2018, through Law no. 169 of July 26, 2018, essential changes and additions were made to Public Procurement Law no. 131/2015, adjusting the regulatory framework to the new European Directives in force (Directive 2014/24/EU and Directive 89 /665/ CCE) [14].

Regarding this project to amend Law no. 131/2015, the National Anti-corruption Center through the anti-corruption expert report no. ELO18/5107 of June 11, 2018 revealed that "some provisions of the project do not come with viable solutions that would ensure a uniform and transparent interpretation and application of the regulations transposed from the directive, there is a need to reformulate them, to take additional measures in order to fit them into the area of social relations characteristic of our country, so that their content is explicitly rendered, respecting the national legislative technique and to incorporate this draft law into the national legal system. Other norms, also transposed from the directive, have a general-declarative and unachievable character because the legislation related to this field is not developed (labelling, sustainable purchases)" [20].

We are of the opinion that, on the one hand, the implementation of the new legal framework requires a period of adaptation on the part of public institutions, so as to facilitate the access of economic operators to public procurement procedures.

On the other hand, in the case of non-implementation of the secondary normative acts on time, the public procurement process, itself, offers a series of opportunities for the development of inappropriate behaviors of

the subjects involved in the process, some of which are likely to be considered acts of corruption, acts related to corruption or acts of corrupt behavior. Moreover, it is necessary for the subjects involved in the public procurement process to own, to know the normative framework and to be aware of the risks to which they may be exposed, in certain situations, how they can avoid violating the rules and what are the consequences in case of non-compliance. For these reasons, it is imperative to adopt legislative and normative acts in such a way, that it is possible to expressly identify those situations that can generate risks, as well as to adopt the instruments and the concrete mechanism by which they could be avoided.

Thus, we mention that the legislative and normative deficiencies related to public procurement persist at the moment, a fact that catalogues this field as still sensitive and vulnerable to fraud and corruption. A primary role in the development of the public procurement system is played by the legal framework, which should meet the most important principles of legislation, namely: appropriateness, coherence, consistency and *balance between competing regulations*.

Taking into account the provisions of the Public Procurement System Development Strategy for the years 2016-2020, approved by Government Decision no. 1332/2016, which highlights the most important characteristics of *Good Governance*, we note two characteristics, such as: **the supremacy of the law and liability**. Through the lens of these characteristics, certain aspects are to be analyzed in this article.

“***The rule of law*** includes *the development of clear and unitary legislation*, but, more than that, also a fair application of procurement rules. Two elements could affect the proper application of the rules, namely: the lack of knowledge and skills at the level of the contracting authorities, and/or the lack of integrity” [21].

Regarding the balance between the competing regulations and the development of a clear and unified legislation, we find that the contraventional normative framework in the field of public procurement is laconic, defective and outdated, a fact that distorts the application of contraventional coercion measures in the field of public procurement.

We mention that when drafting Law no. 295 of December 21, 2017, by which art. 402 of the Criminal Code was presented in a new wording, the principles of the legislative activity provided for in art. 3 letter c) and letter d) were not respected of the Law on normative acts no. 100/2017, namely: legality and balance between competing regulations, as well as the opportunity, coherence, consecutiveness, stability and predictability of legal norms [12], [4], [11].

According to some authors, the Criminal Code establishes for the investigating agent the possibility not only of establishing the fact that there is a reasonable suspicion that a criminal offense has been committed, but also of examining, but more importantly, applying the sanction to the criminal case [23, p. 217].

In this sense, evaluating the provisions of art. 402 paragraph (1) and paragraph (2) of the Contravention Code (in force), which stipulates the administrative authorities under the Ministry of Finance responsible and the contraventions entitled to examine them, a legislative inconsistency was detected namely the lack of express stipulation of “art. 327^1” both in paragraph (1) of art. 402 and another article of the Criminal Code in order to establish another authority responsible for examining/sanctioning public procurement violations (the ascertaining agent).

Thus, we attest to the lack of predictability in the application of contraventions in the field of public procurement, i.e., there is a lack of the ascertaining agent responsible for the examination, ascertainment of the

contraventions stipulated in art. 327[1] "Breach of the rules of initiation and conduct of public procurement procedures" of the Contraventional Code, as well as the application of sanctions.

We reiterate that the field of public procurement is one of the most complex fields, and the efficient use of public money, the transparency of processes and the elimination of corruption are benchmarks that would lead to the provision of quality public services and to the development not only of the infrastructure, but even of the rule of law, based on principles and values.

Or, the Supreme Law in art. 1 paragraph (3) proclaims "The Republic of Moldova is *a state of law* and democracy [...]" [3]. A fundamental principle of the state of law, represents the legality of any administrative process that can be ensured when both rules, responsibilities and clear mechanisms for its implementation are established, as well as appropriate **legal liability** measures for violating the established regulations.

The specialized doctrine approaches the term responsibility and liability for the violation of regulations differently. Thus, according to Professor Gh. Avornic, "Although the dominant term is **liability**, in legal literature the term **responsibility** is used, with the same value and meaning" [2, p. 273]. In the opinion of Professor B. Negru, "Legal responsibility is an integral part of social responsibility. Social responsibility consists in the obligation to bear the consequences of non-compliance with certain rules of conduct, an obligation that is imposed on the author of the deed contrary to these rules and which always bears the stamp of social disapproval of such conduct. The specificity of legal liability consists in the fact that it refers to the obligation to answer for the violation of the rule of law" [16, p.292].

However, "legal responsibility is a coercive measure applied by the state for the commission of an illegal act and expressed through the application of material, organizational or personal sanctions" [2, p. 279].

There are several forms of legal liability (constitutional, administrative, contraventional, disciplinary, criminal, civil, commercial, family, etc.).

In the following we will analyze the contraventional legal liability, which according to the author V. Gutuleac, "arises from the commission of the illegal act, which gives rise to the right of the state to apply the sanction provided for by the violated legal norm and the obligation of the violator to bear the consequences of the coercive measures applied to him/her.

Every violation of legal norms endangers or damages a certain social value, affects social relations or interests protected by them. Depending on the social danger of these violations and the nature of the relationships and interests damaged, illegal acts are classified into: crimes, misdemeanors, administrative violations and disciplinary violations" [7, p. 96].

The author I. Spinu considers that, "looking at the material content of the concrete deed, the contravention differs from the crime, as well as from any other act of violation of some legal norms that prescribe a certain way of individual and social behavior and with which it cannot and must not be confused" [22, p. 63].

Contraventional liability is carried out through the measures to sanction contraventional acts established by law. The sanction is a measure of responsibility that is applied for the purpose of educating the person who committed a contravention, in the spirit of compliance with the laws, as well as for the purpose of preventing the commission of contraventions both by the violator him/herself and by other persons [15, p. 671].

Professor Gh. Avornic concludes that "the sanction is the part or element of the legal norm that foresees the occurrence of consequences

as a result of compliance or non-compliance with the provisions of the disposition and hypothesis” [1, p. 107].

Other authors are of the opinion that “the following acts constitute contraventions, if they were not committed under such conditions as to be considered, according to the criminal law, crimes” [9, p. 257].

Therefore, examining each contravention of art. 237[1], in correlation with Law no. 131/2015, we find a lack of balance between the respective regulations. In this sense, we establish that the provisions of paragraph (2) and paragraph (8) of art. 237[1] do not correspond to the powers of the Public Procurement Agency, because it no longer examines appeals and does not issue decisions regarding public procurement procedures. These powers rest with the National Agency for the Resolution of Appeals.

In this connection, we note that the violation of the rules for organizing public procurement procedures and the non-execution of the (revision) decisions of the National Agency for the Resolution of Appeals by offenders, as well as the awareness that these actions are not subject to criminal liability, generate the perpetuation of committing abuses in the field of public procurement, because there is no coercive measure.

As a result of the audit, the Court of Accounts found that no sanctions were applied during 2020. The non-application of sanctions is due to the legislative changes made in 2018, according to which it is no longer specified that the AAP is the specialized body competent to resolve the contravention cases provided for in art. 327[1] of the Contravention Code. Those mentioned denote the difficult activity carried out by the AAP, which is not in accordance with the legal framework [18].

We are also of the opinion that it is necessary to revise art. 327[1] of the Contraventional Code and the improvement of the rules establishing the contraventional facts in the field of public procurement, because with the development of social relations, including the regulations in the field of public procurement, some contraventional facts are obsolete, and others are missing. In this last sense, we highlight that it is necessary to regulate other contraventional acts, which are frequently violated in the public procurement process, such as: non-publication of the award notice; non-publication of procurement plan and changes; incorrect application, throughout the entire public procurement process, of the award criteria or evaluation factors; canceling an award procedure in cases other than those provided by law or creating situations arranged to cancel the award procedure; violation of the provisions regarding the full and timely information about the decisions taken by the contracting authority regarding the results of the application of the public procurement procedure.

Moreover, the lack of regulation of contraventional liability is established for all categories of subjects involved in the public procurement process, namely: the certified specialist and procurement service providers.

Therefore, the lack of clear stipulations regarding the entity authorized to apply sanctions for illegal actions to subjects involved in the initiation and conduct of public procurement procedures may result in the further commission of illegal violations and abuses in the field.

Returning to the observance of the principles of legislation, we draw attention to the fact that their observance leads to the guarantee of the quality of the legal norms developed. In this context, in the Decision of the Constitutional Court no. 26 of September 27, 2016, the Court emphasizes that, “in order to provide legal security to the recipients of the law, any law must meet certain quality conditions. The requirement of the quality of the law is outlined through the lens of the principle of legal security in the composition of the conditions of predictability and clarity

of the law. In this sense, the Court mentions that the right of every person to know his/her rights and duties, enshrined in art. 23 para. (2) of the Constitution, implies the adoption by the legislator of accessible, predictable and clear laws" [8].

Thus, the lack of coherent stipulation of contraventional liability leads to the non-application of contraventional sanctions, and currently the provisions of art. 327^1 of the Contraventional Code are declarative and inapplicable.

Based on the judicial practice regarding the contraventions examined during the years 2020-2022 on the national portal of the courts of the Republic of Moldova (https://instante.justice.md/), court decisions regarding the contraventions in public procurement were identified [25-34]. From the content of these decisions, the following are established:

– Violations in the public procurement process that are ascertained through the competence of the National Anticorruption Center and the court. Thus, the cases are submitted to the court for examination by the ascertaining agent - the National Anticorruption Center. In this sense, we highlight that according to the provisions of article 401 paragraph (1^1) of the Criminal Code of the Republic of Moldova, the contraventions provided for in articles 264, 312, 313, 315 and 315^1 are ascertained by the National Anticorruption Center. Paragraph (3) of the same article, establishes that - Minutes regarding the contraventions provided for in paragraph (1^1) shall be submitted for substantive examination to the competent court.

– We note that the examination of illegal facts in the public procurement process by the National Anticorruption Center was initiated as a result of the notifications of the Intelligence and Security Service and the National Agency for solving complaints;

– The subjects of the contravention are the decision-makers within the public authorities (contracting authority) who participated directly or indirectly in the decision-making process of initiating, organizing and conducting public procurement procedures, including the award of the public procurement contract. It is found that the members of the working group through their actions have violated the powers stipulated in item 20 of the Government Decision no.667 of May 27, 2016 on the activity of the working group for public procurement and in the disposition/order of the head of the public authority on the establishment and activity of the working group for public procurement. At the moment, the provisions of the Government Decision no.667/2016 were repealed (February 05, 2021), by approving the Government Decision no.10 of January 20, 2021 for the approval of the Regulation on the activity of the working group for acquisitions.

– Furthermore, subjects who participated in the decision-making were identified, not being members of the working group and not signing the declaration of impartiality and confidentiality. In this context, we mention that each member of the working group has the obligation to sign, on his/her own responsibility, a statement of confidentiality and impartiality, by which he/she undertakes to unconditionally comply with the provisions of the Law no.131 of July 3, 2015 on public procurement. Thus, taking into account the opinions of some subjects, who have not formalized their status in the public procurement process, constitutes a violation according to the legal provisions.

– The ascertaining agent established that the members of the working group did not properly fulfill their obligations according to normative acts, committed the contraventions provided for in Article 312 "Abuse of power or abuse of office" and Article 313 "Excess of power or exceeding of office duties" of the contravention Code of the Republic of Moldova.

Following the examination of the disposition of the court decisions [25-34], we establish that

no subject was sanctioned contraventionally, namely: five subjects were found guilty for the imputed contraventional acts, but the contraventional process was terminated on the basis of the expiration of the prescription of prosecution contravention; in five other cases, the termination of the process was ordered, for the reason that there is no fact of the criminal offense.

It is concluded that, currently, violations in the field of public procurement are also ascertained through the lens of the powers of the National Anticorruption Center, which is subsequently referred to the court for substantive examination. At the same time, considering that half of the subjects were found guilty by the court, but the contraventional sanction was not applied to them due to the expiration of the statute of limitations for the contraventional liability, there is still a deficiency in the implementation of the contraventional rules, including in public procurement. In this sense, we propose the revision of the limitation period for contraventional liability provided for in article 30 of the Contravention Code.

Thus, liability for violating the provisions is a priority element in disciplining the subjects responsible for applying the rules.

The danger of risk factors (normative deficiencies) resides in the too wide discretion of the subjects involved in public procurement, discretion that can be used being liable to be held accountable to understand that they could interpret the norm ambiguously and non-exhaustively, either in their own interest or in the interest of a group of people, which may be detrimental to the public interest. In these circumstances, the person will look for ways to bribe the public agent to interpret the norm favorably in order to evade the contraventional liability.

The impact of these risk factors and corruption risks is serious and affects not only good governance by diminishing the efficiency, effectiveness and economy of public procurement, but clearly affects fundamental human rights and freedoms.

Conclusions

In conclusion to the above, we highlight that the rule of law requires ensuring legality and legal certainty. These principles enshrined in Article 1 paragraph (3) of the Constitution are essential for guaranteeing confidence in the rule of law. Therefore, ensuring and respecting these principles obliges the state to enact in a clear and predictable manner the adopted norms, including in the field of contraventional liability in public procurement.

In this context, it is imperative to make changes and additions to the Criminal Code of the Republic of Moldova, as follows:

1. The provisions of art.327^1 regarding the violation of the rules for initiating and conducting public procurement procedures are insufficient, ambiguous and obsolete. In order to discourage the admission of violations in the field of public procurement, it is proposed to revise and supplement this article with more violations subject to criminal liability. We consider it appropriate to modify the following paragraphs of this article, for example:

– the provisions of paragraph (2) and paragraph (8) do not correspond to the powers of the Public Procurement Agency, because according to the legal powers the Agency no longer examines appeals and does not issue decisions regarding public procurement procedures. These powers rest with the National Agency for the Resolution of Appeals. In this sense, it is proposed to modify these paragraphs by replacing the phrase “Public Procurement Agency” with the phrase “National Agency for the Resolution of Appeals”;

– regarding paragraph (7), it is proposed to add the phrase “Public Procurement Agency” with the phrase “and the National Agency for the Resolution of Appeals”, because these public institutions specialized in public procurement in order to fulfill

their functions and attributions need to have complete information when examining and issuing decisions, monitoring reports and other information;

– revising and completing the subjects liable to contravention liability in the field of public procurement, by including the certified specialist and public procurement service providers;

– completion of the article, with several facts/violations subject to criminal liability, such as: non-publication of the purchase contract award announcement; non-publication of procurement plan and changes; incorrect application, throughout the entire public procurement process, of the award criteria or evaluation factors; canceling an award procedure in cases other than those provided by law or creating situations arranged to cancel the award procedure; violation of the provisions regarding the full and timely information about the decisions taken by the contracting authority regarding the results of the application of the public procurement procedure;

– reviewing the amount of fines in order to increase them, a fact that would discourage the commission of contraventions in the field of public procurement;

2. With regard to article 402, we consider it necessary to complete paragraph (1) with the phrase "article 327[1]" and the exact establishment of the competent authority to resolve contravention cases. For example: it should be expressly established that the Public Procurement Agency is responsible for examining contraventions from article 327[1].

3. Moreover, it is considered relevant to ensure a balance between the normative acts related to the field of public procurement and to make simultaneous changes to article 10 of the Law on public procurement, no. 131/2015 in order to stipulate the exact attribution of the Public Procurement Agency "to examine, ascertain contraventions and apply contravention sanctions".

– Establishing a functional internal mechanism for enforcement of contraventions in this area. The need for a broad and uniform regulation, regarding the liability that derives from the principle of precision and consistency of the normative text.

Bibliography

1. AVORNIC, Gh. *Tratat de teorie generală a statului și dreptului (în două volume).* Ch.: S.n.,2010 (F.E.-P. „Tipogr.Centrală)., Vol.1 – 440 p, ISBN 9975-70-370-4.

2. AVORNIC, Gh. *Tratat de teorie generală a statului și dreptului (în două volume).* Ch.: S.n., 2010 (F.E.-P. „Tipogr.Centrală)., Vol. 2 – 580 p., ISBN 978-9975 78-864-9.

3. Constituția Republicii Moldova din 29.07.1994. În: *Monitorul Oficial nr.1 din 18.08.1994; Republicată în Monitorul Oficial,* 2016, nr. 78 art. 140.

4. Codul contravențional al Republicii Moldova nr.218-XVI din 24.10.2008, Republicat în *Monitorul Oficial, 2017,* nr. 78-84 art. 100.

5. FLORESCU, D. A. Petru, COMAN, L.. *Achiziții Publice. Reglementare, atribuire, audit financiar, jurisprudență,* București, Editura S.C. Universul Juridic SRL, 2013, ISBN 978-606-673-017-4.

6. GUȚULEAC, V., COMARNIȚCAIA, E. *Drept contravențional: note de curs;* Inst. De științe penale și Criminologie Aplicată, criminologie Aplicată. – Ed.a 2-a, rev. Și actualizată. – Chișinău: S.N., 2016 (Tipogr. „Baștina Radog"). – 208 p. ISBN 978-9975-3101-4-7.

7. GUȚULEAC, V. *Tratat de drept contravențional* – Chișinău: S.n., 2009 (E.F.-P. „Tipogr. Centrală"). – 320 p. ISBN 978-9975-78-739-0.

8. Hotărârea Curții Constituționale nr.26 din 27 septembrie 2016privind excepţia de neconstituţionalitate a unor prevederi din Legea nr.142-XVI din 26 iunie 2008 cu privire la ipotecă (notificarea debitorului ipotecar) (Sesizarea nr.83g/2016), În: *Monitorul Oficial al R. Moldova,* 416-422/101, 02.12.2016.

9. LĂZĂROIU, P., COCHINȚU, I., POPESCU, M. Ag., CÂRLAN, M. V. *Curs de achiziții publice: aspecte teoretice și aplicații practice*, București: Editura Hamangiu, 2018 – 265 p., ISBN 978-606-27-1070-5.

10. Legea pentru ratificarea Acordului de Asociere între Republic of Moldova, pe de o parte, și Uniunea Europeană și Comunitatea Europeană a Energiei Atomice și statele membre ale acestora, pe de altă

parte, nr. 112 din 02-07-2014, În: *Monitorul Oficial, 2014,* nr. 185-199 art. 442.

11. Legii cu privire la actele normative nr.100 din 22.12.2017. În*: Monitorul Oficial al R. Moldova* nr. 7-17 art. 34 din 12.01.2018.

12. Legea pentru modificarea și completarea unor acte legislative nr. 295 din 21.12.2017, În: *Monitorul Oficial, 2018,* nr. 7-17 art. 58.

13. Legea privind achizițiile publice nr. 131 din 03-07-2015, În: *Monitorul Oficial, 2015,* nr. 197-205 art. 402.

14. Legea pentru modificarea Legii nr. 131/2015 privind achizițiile publice nr. 169 din 26.07.2018, În: *Monitorul Oficial,* 2018, nr. 321-332 art. 527.

15. MĂRGINEANU, G., MĂRGINEANU, L. *Dreptul afacerilor* – Ch.: S.n., 2004 (Tipogr. „Elena-V.I.”). – 721 p. ISBN 9975-9750-2-X.

16. NEGRU, B. *Teoria general a dreptului şi statului,*secţia editare a Academiei de Administrare Publică pe lângă Guvernul Republicii Moldova, Chișinău, 1999.

17. NICA, E. *Managementul achizițiilor publice*, București, Editura Economică, 2012, ISBN 978-973-709-642-5.

18. Raportul auditului conformității asupra achizițiilor publice în cadrul sistemului Ministerului Finanțelor în anii 2019-2020, aprobat prin Hotărârea Curții de Conturi nr.48 din 30 iulie 2021. În: *Monitorul Oficial al R. Moldova* nr. 212-218 art. 64 din 10.09.2021.

19. Raport privind activitatea în domeniul achizițiilor publice desfășurată în perioada anului 2020, elaborat și publica de Agenția Achiziții Publice. Disponibil:*https://tender.gov.md/sites/default/files/document/attachments/raport_aap_2020_0.pd.*

20. Raportul de expertiză anticorupție Nr. ELO18/5107 din 11.06.2018 la proiectul de lege pentru modificarea și completarea Legii nr.131 din 03 iulie 2015 privind achizițiile publice al Centrului Național Anticorupție. Disponibil: https://cna.md/report_view.php?l=ro&id=5355.

21. Strategia de dezvoltare a sistemului de achiziții publice pentru anii 2016-2020 și a Planului de acțiuni privind implementarea acesteia, aprobată prin Hotărârea Guvernului nr. 1332 din 14.12.2016. În: Monitorul Oficial, 2016, nr. 459-471 art. 1442.

22. SPÎNU, I. *Note de curs drept contravențional și procedura contravențională* , S.n. 2018, f.E.-P. „Tipografia centrală” – 182 p. ISBN 978-9975-53-973-9.

23. TROFIMOV, I., CREȚU, A. *Drept procesual contravențional* / Acad. „Ștefan cel Mare” a Ministerului Afacerilor Interne. – Chișinău: cartea Militară, 2017 (Tipografia Academiei „Ștefan cel Mare” a MAI.). – 245 p. ISBN 978-9975-3163-1-6.

24. https://ager.md/2020/07/13/apel-deschis-al-societatii-civile-catre-autoritati-privind-ajustarea-cadrului-legal-privind-lista-de-interdictie-a-agentiei-achizitii-publice/ (vizitat la data de 10.10.2021).

25. Hotărârea instanței de judecată (dosar contravențional nr.4-2185/2020), disponibil on-line: https://jc.instante.justice.md/ro/pigd_integration/pdf/0ccb2c53-6241-4f8c-a20c-82534b030006 (vizitat la data de 19.09.2022).

26. Hotărârea instanței de judecată (dosar contravențional nr. 4-2169/2020), disponibil on-line: https://jc.instante.justice.md/ro/pigd_integration/pdf/9aa38eca-f092-48d7-94b9-794716d6109a (vizitat la data de 19.09.2022).

27. Hotărârea instanței de judecată (dosar contravențional nr. 4 – 2184/2020, disponibil on-line: https://jc.instante.justice.md/ro/pigd_integration/pdf/196f0d39-361f-4da4-94d3-31838bd86387 (vizitat la data de 19.09.2022).

28. Hotărârea instanței de judecată (dosar contravențional nr. 4-2399/2020),disponibil on-line: https://jc.instante.justice.md/ro/pigd_integration/pdf/0f8a60c1-aae6-4895-bd7c-0f906c76c86a (vizitat la data de 19.09.2022).

29. Hotărârea instanței de judecată (dosar contravențional nr. 4-2177/20), disponibil on-line: https://jc.instante.justice.md/ro/pigd_integration/pdf/03364793-0639-4412-8e90-1055365b69e2 (vizitat la data de 19.09.2022).

30. Hotărârea instanței de judecată (dosar contravențional nr. 4-174/2021), disponibil on-line: https://jch.instante.justice.md/ro/pigd_integration/pdf/4c8153cd-b93f-4075-86e0-004d03d942fc (vizitat la data de 19.09.2022).

31. Hotărârea instanței de judecată (dosar contravențional nr. 4-139/2021),disponibil on-line: https://jch.instante.justice.md/ro/pigd_integration/pdf/dc7a5d3e-c4dd-4ef5-89ec-eb9dab9f79f3 (vizitat la data de 19.09.2022).

32. Hotărârea instanței de judecată (dosar contravențional nr. 4-63/2021),disponibil on-line:https://jch.instante.justice.md/ro/pigd_integration/pdf/45c76ba8-3153-4d5a-897e-4760c8d2cc0b (vizitat la data de 19.09.2022).

33. Hotărârea instanței de judecată (dosar contravențional nr. 4-60/2021), disponibil on-line: https://jch.instante.justice.md/ro/pigd_integration/pdf/4722b9a7-8e76-4c82-a14d-3d25e5b3cf23 (vizitat la data de 19.09.2022).

34. Hotărârea instanței de judecată (dosar contravenționalnr. 4-2025/2020),disponibil on-line: https://jc.instante.justice.md/ro/pigd_integration/pdf/0f4bf45f-debd-4206-908b-44b5622e97f2 (vizitat la data de 19.09.2022).