

## **ABSTRACT**

of the dissertation for the degree  
of Doctor of Philosophy (PhD)

on "International legal regulation of government procurement: WTO practice,  
foreign experience and legislation of the Republic of Kazakhstan"

performed by

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**Relevance of the research topic.** One of the main components of the activities of public authorities is the procurement of goods, works and services at the expense of the state budget to perform state functions and meet public needs. Such purchases are called government (public) procurement.

In today's economy, the system of government procurement is a mandatory element of public finance management and is designed to perform not only the functions of public needs, but also the functions of state regulation of the economy. Also, government procurement serves as an important policy tool that governments can use to stimulate changes in public service delivery, create fiscal space and jobs, as well as stimulate private sector growth, especially by providing a level playing field for small and medium businesses.

The international government procurement market is one of the fastest growing sectors of world trade. Initiatives to improve government procurement systems are developing at different levels of international cooperation. Among the international documents, aimed at optimization of the studied object, there are UNCITRAL Model Law on Public Procurement, WTO Agreement on Government Procurement, EU Directives, EAEC Treaty and others. These international acts aim to support the harmonization of international standards in government procurement. International organizations such as the World Bank and OECD develop guidelines and recommendations for states to reform the mechanisms of procurement, implementation of the best practices of their implementation.

Today the issue of legal regulation of government procurement is relevant throughout the world, as the direct initiator of this process is the state itself, which is interested in maximizing its effectiveness. The Republic of Kazakhstan is not an exception in this matter, as domestic legislation regulating the mentioned sphere has a lot of issues that need to be solved to increase the efficiency of public procurement.

**The purpose of the work is** to prepare science-based recommendations for improving international legal regulation of government procurement, as well as the legislation of the Republic of Kazakhstan on public procurement to improve the effectiveness of their implementation.

**Achievement of the above goal of the thesis research involves solving the following tasks:**

- to consider the concept and principles of government procurement;
- to determine the features of the legal regulation of government procurement in foreign countries

- to analyze the content of the regulatory framework for the formation of a common market for government procurement in accordance with the provisions of the Treaty on EAEU;

- to determine the impact of the WTO Agreement on Government Procurement on the process of harmonization of legislation on government procurement of member states of the organization;

- analyze the role and importance of the UNCITRAL Model Law on Public Procurement as a tool for shaping the legislation of the states in the field of regulation of public procurement

- to analyze the genesis and subsequent evolution of the legislation of the European Union on the harmonization of the legislation of its member States on public procurement, to identify key innovations in their regulation;

- to study the content of the mechanism of legal regulation of public procurement, as well as to identify current problems of their regulation in the Republic of Kazakhstan;

- to study current problems arising in the process of harmonization of legislation on public procurement in the framework of international organizations, to study the experience of foreign countries to propose the best legislative practices for application in the Republic of Kazakhstan.

**The object of the research** are interstate and intra-state relations that develop in the field of government procurement.

**The subject of the research** is international legal regulation of government procurement from the point of view of WTO practice, foreign experience, and legislation of the Republic of Kazakhstan.

**Scientific novelty.** In the thesis, for the first time in the Kazakhstani science of international law, the system analysis of the current legislation of the Republic of Kazakhstan on government procurement was carried out; we have substantiated proposal on the need to accelerate the process of integration into the market of government procurement within the WTO; formed conclusion about the introduction of more flexible conditions and rules of functioning of government procurement market of the EAEC member states; proposed ways of improving national framework of government procurement on the basis of foreign countries experience and activity.

**The methodological basis of the thesis research consisted** of general scientific and special methods of scientific knowledge of legal phenomena: systemic, historical, and legal, comparative legal, statistical and others.

Based on historical and legal method of knowledge the study of genesis and subsequent evolution of legal acts of the Republic of Kazakhstan, and international documents governing government procurement was conducted.

Comparative legal method was used to identify similarities and differences in certain aspects of foreign countries legislation on public procurement, as well as to compare harmonized EU norms on public procurement with similar norms in the Eurasian Economic Union about legal regulation.

The study also used the statistical method, which was reflected in the analysis of statistical data of the Republic of Kazakhstan, as well as the main indicators in

the field of public procurement within the EAEU. Dogmatic method provided an opportunity to study the legislative framework of some states.

The method of analysis revealed the essence of the concept of “government procurement”, highlighted the principles of its implementation and features within the framework of certain international organizations and integration associations. The method of functional analysis provided an opportunity to consider the key characteristics of this mechanism based on legislative norms. The method of axiomatic analysis allowed to study the essence and role of public procurement in the economic system of the EAEU member states. On this basis, the theoretical component of this study was analyzed.

By using the method of logical analysis, the problematic aspects that stand in the way of proper functioning of the sector under consideration in the EAEU were investigated. Using the formal-legal method, based on the analysis of the national legislation of the member states the ways to overcome these problematic aspects were highlighted. The method of analogy provided an opportunity to consider the common features of the legal regulation of public procurement of certain states.

**The main statements made for the defense:**

1. The Republic of Kazakhstan needs to accelerate the process of signing the WTO Agreement on Government Procurement. This will significantly increase the transparency of public procurement in our state. Accession to the Agreement in the future will reduce the cost and improve the quality of public services in the country and will allow Kazakhstani companies to access the market of public procurement of other WTO member states.

2. The EAEU needs to introduce more flexible conditions and rules for the functioning of the government procurement market, considering the individual characteristics of each member country. Also, further convergence requires harmonization of legislation, mandatory rules and requirements, and a gradual transition to common procurement standards.

To reduce the negative effects of existing obstacles it seems appropriate to recommend:

- to create a unified electronic base of public procurement, which will provide unhindered access of potential suppliers from the EAEU member states based on the national regime, the work of which will be based on the principles contained in the EAEU Treaty, which will create the necessary conditions for expanding the number of potential participants in public procurement from the Union, will provide equal access to published information on procurement;

- to regulate the issue of improving the competence of officials involved in public procurement in the Union member states at the national level, as well as to exchange experiences that will improve procurement practices.

- to create a publicly accessible register of public procurement contracts of EAEU countries to ensure the transparency of concluded contracts.

- to accelerate the process of taking measures for the full digitalization of public procurement in the EEU states, which will ensure mutual recognition of electronic digital signatures made in accordance with the legislation of one member

state by another member state for public procurement purposes, as well as the formation of a digital register of bank guarantees.

3. One of the reasons leading to the inefficiency of public procurement is the frequent unprofessional approach of many officials who carry out these procurements. This issue remains relevant and needs to be resolved, since it is the customers, representing the state, enter public procurement contracts on its behalf, spend huge funds from the state budget. In this regard, the paper justifies the need to establish qualification requirements for persons who carry out public procurement on behalf of the procurement organization, in the legislation of the Republic of Kazakhstan.

4. An important tool to achieve effective organization and management of government procurement is the principles. Compliance with the principles of government procurement is a prerequisite for improving the efficiency and transparency of the procurement process. Their violation can lead to unfair practices and the growth of corruption, which negatively affects the quality of goods and services, as well as the use of financial resources of the state. The study examined the principles of government procurement established by international and domestic legislation. And also it was proposed to supplement Article 4 of the Law “On Public Procurement” with the principle of competence of officials who carry out public procurement, which is undoubtedly an important principle that contributes to the effectiveness and transparency of procurement procedures, as well as the prevention of corruption schemes and misconduct in the area in question.

5. In the Kazakhstan legislation on public procurement there are provisions defining dumping price when carrying out procurement by tender, request for quotations, through e-shop. Thus, a price proposal of a potential supplier participating in public procurement by way of request for quotation is considered to be dumping if it is more than 30% lower than arithmetic average price of all submitted quotations, and by electronic store - 50% lower than arithmetic average price of all quotations of potential suppliers that have placed information for the specified goods.

We consider it necessary to reduce the spread of prices to 10% in these methods of procurement as much as possible. The need for such a change is justified in the work. In this connection, it is proposed to make appropriate changes points 80 and 81 of the Order of the Minister of Finance of RK from 2015 “On Approval of the Rules for Public Procurement”.

6. The main problem of inefficient procurement is corruption, which is expressed in the abuse of state budget funds. Suppression of corruption schemes and other illegal actions in the implementation of public procurement is important to ensure transparency and efficiency in this sphere.

Insufficient control over the procurement process by state authorities, the weak system of penalties for violations of rules and requirements regulating public procurement procedures may create conditions for corruption and increased opportunities for corruption schemes. In this regard, it was proposed to introduce to Chapter 15 of the Criminal Code of Kazakhstan “Corruption and Other Offenses Against the Interests of Public Service and Public Administration” article “Unlawful

Implementation of Public Procurement”, which provides criminal responsibility for non-compliance with the rules of public procurement, resulting in significant social and economic damage to the state or other participants of public procurement system.

**Approbation of the results of the study was conducted** at each stage of the dissertation work as the research results were obtained. The dissertation was discussed at the International Law Department of the Faculty of International Relations of Al-Farabi Kazakh National University. The results of the research were considered at the scientific seminars of the department.

The main conclusions of the thesis have been published in 9 scientific publications, 1 of which is included in the database Scopus, 3 articles in scientific journals, recommended by the Committee on Quality Assurance in the sphere of science and higher education of the Ministry of Science and Higher Education of the Republic of Kazakhstan, as well as in the materials of international scientific conferences and other journals.