

R.B. Zhagalov* 

Buketov Karaganda National Research University, Karaganda, Kazakhstan
(E-mail: jagalov.rus@mail.ru)
ORCID ID: 0009-0004-1476-4738

The register of unscrupulous suppliers as a tool for protecting state interests and preventing violations in the procurement sphere

The public procurement system represents a set of relationships directly linking state authorities and suppliers. Integrity and reliability of contracting parties serve as key guarantees of stability in civil turnover. This, in turn, is defined as the principal objective of the public procurement system, namely, the effective management of public finances and the state budget, as well as the protection of public interests. This article addresses both theoretical and practical issues of civil-law liability of unfair counterparties arising within the sphere of tender relations in Kazakhstan. The purpose of the study is to identify the scope of civil-law liability of unfair suppliers in public procurement, to strengthen this liability, to emphasize the significance of the Register of Unfair Suppliers, and to develop relevant legislative proposals. The research applies a comparative analysis of domestic and foreign legislation, supported by judicial practice, in order to achieve the stated objectives. The study also proposes the introduction of the concept of an “unfair supplier” into the Law of the Republic of Kazakhstan “On Public Procurement” and other normative acts, as well as the integration of registers of unfair suppliers across procurement-related platforms. The methodological framework of the study includes formal-logical, analytical and synthetic, comparative-legal, general-state, statistical, and historical-legal methods.

Keywords: tender, public procurement, civil liability, unfairness, penalty, contracting authority, supplier, register, contract, portal.

Introduction

The Head of State, in his 2023 Address to the People of Kazakhstan, emphasized the necessity of introducing a new procurement system through the reform of the public procurement sector. The objective of the new system is to increase supplier accountability and to strengthen the principles of transparency and efficiency [1]. In civil law relations, the issue of liability consistently remains one of the most relevant and enduring subjects of scholarly and practical significance.

The functioning of the public procurement system in the Republic of Kazakhstan is regulated by the Law of the Republic of Kazakhstan “On Public Procurement”, the Civil Code of the Republic of Kazakhstan, the Rules for the Implementation of Public Procurement, the Rules for the Formation and Maintenance of Registers in the Field of Public Procurement, as well as other regulatory legal acts [2; 172].

In the Republic of Kazakhstan, within the framework of public procurement procedures, the integrity and reliability of suppliers constitute an essential criterion for contracting authorities when concluding agreements, given the significant volume of budgetary funds allocated to public procurement and the large number of contracts concluded. In tender relations, it is impossible to assess in advance the degree of reliability of suppliers with respect to the proper fulfillment of their contractual obligations. At the same time, it is necessary to take into account the high risk of the emergence of unscrupulous counterparties within this system, which ultimately leads to adverse legal consequences. In practice, identifying an unscrupulous supplier and preventing the conclusion of a contract with such a party poses considerable challenges, since the supplier cannot be determined until the completion of the tender procedure.

The issue of reliability and quality has become one of the fundamental criteria in the contemporary business sector. Trust in suppliers directly determines the quality of services rendered, work performed, and goods delivered. Access to information on unscrupulous suppliers enables the prevention of adverse legal consequences. It is well established that databases and specialized registers exist, containing information on suppliers who have violated public procurement rules or failed to meet qualification requirements. The primary purpose of establishing a register of unscrupulous suppliers is to alert participants in civil turnover to unreliable (dubious) companies or those failing to comply with prescribed standards of quality, ethics, and

* Corresponding author. E-mail: jagalov.rus@mail.ru

legality. The maintenance of such a register may be regarded both as a sanction imposed on unscrupulous suppliers and as a valuable instrument for various stakeholders in the process of selecting potential contractors in the future.

Methods and materials

This study as its basis used the Law of the Republic of Kazakhstan “On Public Procurement”, the Rules for the Implementation of Public Procurement, the Procedure for Procurement in the Quasi-Public Sector, and other regulatory acts within the framework of public procurement legislation, as well as periodical publications. The research, applying general scientific theoretical methods of cognition, examined issues of civil liability of suppliers; additionally, methods of analysis, synthesis, historical-legal inquiry, generalization, and logical reasoning were utilized.

By applying statistical analysis, indicators were obtained based on an examination of registers of unscrupulous suppliers maintained on procurement platforms. On the basis of judicial practice, the causes and consequences of the inclusion of unscrupulous suppliers in such registers in Kazakhstan were identified. A comparative legal analysis was conducted of the civil liability of unscrupulous suppliers in the field of public procurement and of the regulatory frameworks governing registers of unscrupulous suppliers in the Republic of Kazakhstan and in foreign jurisdictions.

Results

The concept of bad faith in commercial relations originates from the broader evolution of legal thought. Historical and legal analysis demonstrates that this concept can be traced back to Ancient Roman Law. In Ancient Rome, the regulation of trade relations between sellers and buyers was of particular significance. The institution of *nexum* was among the earliest mechanisms designed to ensure good faith in the Roman commercial sphere. The first norms establishing liability for bad faith conduct in trade relations were reflected in the Law of the Twelve Tables (451–450 BCE): the Third Table provided for liability for non-performance of obligations, while the Eighth Table introduced provisions concerning punishment for fraud in commerce [3]. Modern textbooks on Roman law emphasize that debtors were held liable for failure to perform or for improper performance of their obligations. As the sources of Roman law indicate, at the outset the liability of unscrupulous debtors was of a personal character, manifested in severe sanctions, such as imprisonment, enslavement, or even capital punishment. Over time, the forms of liability were gradually humanized, shifting from personal sanctions to property-based sanctions, whereby the debtor was held accountable not for his liberty or life but for his assets. This evolution reflects a fundamental transformation in understanding of the balance between the effectiveness of legal coercion and the humanistic values underpinning the development of commercial law [4; 189]. Opportunistic conduct is traditionally regarded as a phenomenon arising from the interaction of individuals and is directed toward pursuing self-interested objectives within contractual relations [5].

According to Article 8 of the Civil Code of the Republic of Kazakhstan, the principles of good faith, reasonableness, and fairness constitute the fundamental mechanism for regulating civil law relations [6]. The exercise of civil rights must not infringe upon the rights and legally protected interests of other legal subjects, nor cause harm to the surrounding environment. The recognition of bad faith conduct is primarily characterized by the requirement to demonstrate its intentional and malicious nature. Legal doctrine proceeds from the maxim *nullum malum sine culpa* (“there is no wrongdoing without fault”), and the determination of proportionality between fault and the harm caused constitutes an essential element of the administration of justice. By delineating the opposition between the terms “fairness” and “unfairness”, it becomes possible to evaluate the key indicators of actors in commercial relations. According to T.F. Efremova’s lexicographic explanatory dictionary, unfairness is defined as the absence of a sense of responsibility and the failure to perform one’s duties and obligations in a fair and conscientious manner [7]. In addition, in the dictionary of legal terms compiled by domestic authors, “unfairness” is defined as a series of interrelated actions undertaken by a subject in the exercise of their rights in violation of legal principles [8].

The concept of good faith represents a vital dimension of civil-law relations among participants in civil turnover. A.R. Sultanov emphasizes that the evaluation of good faith and unfairness primarily requires an assessment of the extent to which civil turnover conforms to established standards. In this respect, taking into account the legitimate interests of the contracting parties, it is necessary to determine the degree of their informational interaction [9]. Nevertheless, it should be recognized that trust in counterparties engaged in civil-law relations plays a crucial role as a guarantee of the successful performance of contractual

obligations. M.K. Suleimenov, presenting a broad range of perspectives on the concept of good faith, came to the following conclusion: first, good faith is associated with moral and ethical principles grounded in honesty and a considerate attitude toward one's counterparties; second, these principles are applied predominantly within the sphere of obligational legal relations [10]. V.I. Emyanov pointed out the necessity of applying the concept of unfairness in a broad sense, observing that in civil-law relations adverse consequences may arise not only from the direct breach of contract or the commission of a tort. He underscored that indicators of unfair conduct may also be discerned in situations where a person, being aware of the potential adverse consequences of their actions, deliberately acts in bad faith, or where such consequences in fact materialize as a result of the actions undertaken [10].

The register of unfair participants in public procurement operates not only within the domain of public procurement itself but also as an institution of reputational influence, performing a signaling function in private-law relations and enabling counterparties in civil-law transactions to assess the risks of commercial engagement. This, in turn, creates conditions for the prevention of a number of adverse legal consequences in the selection of suppliers. In light of the current circumstances, it is essential to emphasize the necessity of defining the precise legal status of an unfair participant in the field of public procurement and of recognizing the significance of the register of such participants.

Discussion

The Law of the Republic of Kazakhstan "On Public Procurement" establishes the conditions and procedures for recognizing suppliers as unfair, with these provisions aimed at enhancing the liability of business entities and restricting the participation of unfair suppliers in public procurement. However, the legislation does not provide a precise definition of the concept of an «unfair participant in public procurement». In the academic literature, diverse theoretical perspectives have emerged regarding the principal functions and legal nature of the register of unfair suppliers. S.A. Ivanova has observed that the register of unfair suppliers possesses a public-law character. This approach interprets the register as a mechanism of state control directed toward the efficient use of budgetary resources, the safeguarding of fair competition, and the realization of public interests [11]. O.A. Belyaeva has likewise argued that this register constitutes a measure for the protection of the rights of legal subjects in civil turnover and serves as a publicly accessible source enabling the assessment of the reliability of counterparties engaged in such relations [12]. According to A.V. Dyomkina, the inclusion of suppliers (contractors, service providers) in the register of unfair suppliers functions as a mechanism for safeguarding the rights of contracting authorities within the contractual system of procurement of goods, works, and services for state and municipal needs [13]. The author particularly emphasized that the entry of suppliers into the register of unfair suppliers gives rise not only to administrative legal relations but also to civil-law relations. In the Russian Federation, the legal basis for including business entities in the register of unfair suppliers is established by Article 104 of Federal Law No. 44-FL of April 5, 2013, "On the Contract System in the Procurement of Goods, Works, and Services for State and Municipal Needs". This provision regulates the procedure for maintaining the register of unfair suppliers. The register contains information on procurement participants who have evaded the conclusion of a contract, as well as on suppliers (contractors, service providers) who have failed to perform or have improperly performed their contractual obligations. The law prescribes the procedure by which the contracting authority transmits information to the competent federal body, the process of its verification, the rules governing the inclusion and removal of information from the register, and further guarantees open and free access to these data. The maintenance of the register of unfair suppliers (contractors, service providers) is carried out within the unified information system through the publication of the information provided for in this article by the federal executive authority authorized to exercise control in the field of procurement [14]. In her dissertation Civil-Law Regulation of Contractual Relations in Public and Municipal Procurement in the Russian Federation, M.V. Shmeleva notes that the inclusion of business entities or state authorities in the register of unfair suppliers or unfair contracting authorities serves to protect the rights of counterparties in contractual relations, thereby combining both regulatory and preventive functions. The author addresses not only unfair suppliers but also undertakes a comprehensive examination of the institution of unfair contracting authorities [15]. V.A. Kondratyev has observed that the inclusion in the register of unfair suppliers of information solely about a legal entity or an individual entrepreneur is insufficient. He proposed that the register should also contain data on individuals involved in the management and support of such business entities. This proposal is linked to the fact that, in recent years, the state has significantly simplified the procedure for establishing such forms of entrepreneurship in order to promote business development,

which has, in turn, led to instances of evading liability [16]. This approach is reflected in Article 28 of the Law of the Republic of Kazakhstan on Public Procurement, adopted in 2024 [17].

However, it is evident that the inclusion of individuals in the register of unfair suppliers gives rise to not only theoretical but also practical challenges. The scholarly approaches discussed provide a comprehensive understanding of this legal institution as one that integrates elements of public and private law, thereby ensuring the protection of legal order in the sphere of contractual relations and the maintenance of economic stability.

In judicial practice, when considering cases where a supplier recognized as the winner of a tender evades the conclusion of a contract, provides information that does not meet the qualification requirements, or fails to fulfill or improperly fulfills its obligations, two types of sanctions may be imposed by the court:

1. The obligation to pay a penalty, including fines and late fees, as well as to perform the contractual obligation.

2. Recognition of the supplier as an unfair participant in the sphere of public procurement and inclusion in the register of unfair participants.

When considering the main causes and consequences, in the first instance, under the Rules on Public Procurement, if the delivery deadlines for goods are delayed and the Supplier fails to fully perform its obligations, the Customer is entitled to withhold (recover) a penalty (fine, late fee) from the Supplier in the amount of 0.1 (zero point one) percent of the total contract value for each day of delay. In cases of improper (partial) performance of obligations, a penalty of 0.1 (zero point one) percent of the value of the unfulfilled obligations is imposed for each day of delay. At the same time, the total amount of penalties (fines, late fees) may not exceed 15 (fifteen) percent of the overall contract value [18]. In certain cases, these amounts do not reach significant levels in comparison with the total value of the tender. This is due to the fact that the smaller the tender amount, the lower the amount of penalties recoverable. Therefore, the improvement of this system necessitates the adoption of specific mechanisms.

In the second case, if a supplier is declared an unfair participant in public procurement by a court decision, it is entered into the register of unfair suppliers for a period of two years, thereby restricting its ability to participate in tenders during this period. Pursuant to subparagraph 4 of Article 8 of the Law of the Republic of Kazakhstan "On Public Procurement", the following cases warrant inclusion in the register of unfair participants in procurement:

1) for providing inaccurate information by suppliers (i.e., for submitting false data in the course of fulfilling contractual obligations, for example, regarding the price of goods, delivery terms, or their quality, etc.);

2) for evasion by a potential supplier, recognized as the winner of the tender, from entering into a contract (that is, for refusing to conclude a contract for known or unknown reasons);

3) for non-performance by the supplier of obligations under the concluded contract (that is, for refusing to fulfill the obligations stipulated by the contract);

4) for improper performance by the supplier of obligations under the concluded contract (that is, for failing to duly perform the contractual obligations, for instance, in the appropriate scope or at the required quality level, etc.) [17].

In general, the contracting authority is obliged, within thirty calendar days from the moment of detecting a violation of the legislation of the Republic of Kazakhstan on public procurement, to file a claim in court seeking recognition of the potential supplier or supplier as an unfair participant in public procurement and requesting their inclusion in the relevant register [18].

Within this framework, the following case may be considered. By a decision of the Specialized Interdistrict Economic Court dated October 2, 2019, rendered upon the claim of the State Institution "Department of Public Procurement of the City of Aktobe", individual entrepreneur D.B. Kaluov ("Zharyk" IE) was declared an unfair participant in public procurement. It was established that on 27 May 2019, the claimant, acting as the organizer of public procurement, announced an open tender No. 3391132-1 for "Maintenance of green spaces in the territory of the city of Aktobe". According to the protocol of results dated July 2, 2019, the respondent was recognized as the winner. During the judicial proceedings, the respondent, to confirm the availability of material resources necessary for the performance of contractual obligations, presented information regarding a vehicle of the "GAZ 53A" model, allegedly leased from a third party. However, according to the data provided by the State Institution "Department of Police of the Aktobe Region", the aforementioned vehicle had been deregistered on 5 April 2017 and therefore could not have constituted the object of a lease. Consequently, the submission of inaccurate information concerning

compliance with qualification requirements by IE D.B. Kaluov served as the basis for recognizing him as an unfair participant in public procurement [19]. Accordingly, any false information relating to qualification requirements and/or documents influencing the tender price proposal constitutes sufficient grounds for declaring a supplier an unfair participant in public procurement.

Judicial practice demonstrates a noticeable increase in the number of cases adjudicated on such grounds.

In the Law of the Republic of Poland On Public Procurement, special legal mechanisms are established to restrict the participation of unfair suppliers in tender procedures. In particular, pursuant to Articles 108 and 109, the contracting authority is vested with the right to limit the participation of suppliers in procurement procedures. Article 111 of the same law stipulates that, on the grounds set forth in Articles 108 and 109, a supplier's right to participate in public procurement may be restricted for a period ranging from one to five years [20]. It should be emphasized that, unlike the legislation of the Republic of Kazakhstan, Poland does not maintain a special state register of unfair suppliers. By contrast, in the Kazakhstani legal system, such a register functions as an effective instrument for the automatic exclusion of unfair counterparties from the procurement sphere. Furthermore, in the Republic of Poland, the contracting authority bears the responsibility for verifying the good faith of participants in public procurement procedures through national and European databases, which, in turn, creates certain challenges.

In the era of digitalization, the establishment and utilization of a register of unfair suppliers on publicly accessible platforms assume particular significance. One of the largest web portals within the public procurement system is the Public Procurement Portal of the Republic of Kazakhstan. Drawing upon data available from the web portal <https://goszakup.gov.kz> [21], reference may be made to statistics concerning suppliers entered into the register of unfair participants based on subparagraph 4 of Article 8 of the legislation on public procurement. Since the introduction of this portal in 2010, a total of 214,552 suppliers have been registered (see Table 1). According to information provided on the web portal <https://goszakup.gov.kz>, in the last two years alone, 17,212 suppliers have been placed on record. This figure continues to increase on a daily basis.

Table 1

Statistical Indicators of the Register of Unfair Participants on the Public Procurement Web Portal for the Period 2010–2025

No	Grounds for Inclusion in the Register of Unfair Participants	Number	%
1	A potential supplier provided questionable information regarding compliance with qualification requirements.	1655	0.8
2	A potential supplier committed a violation of the requirements set forth in Article 6 of the Law on Public Procurement.	1541	0.74
3	A potential supplier evaded the conclusion of a public procurement contract.	35560	17.15
4	A supplier, having entered into a public procurement contract, failed to duly fulfill the requirements for providing performance security and/or to meet the deadlines for its submission.	52084	25.12
5	A supplier failed to perform or improperly performed its obligations under the concluded public procurement contract.	116477	59.18
	Grand total:	220149	100 %

Relying on data provided by the Samruk-Kazyna portal (<https://zakup.sk.kz>), as of 2025, 2,984 suppliers were recorded in the register of unfair suppliers. According to the 2023 annual report of JSC "Samruk-Kazyna", 924 suppliers were entered into this register, of which 464 were for evading the conclusion of a contract, 376 based on court decisions for failure to perform or improper performance of contractual obligations, 60 for failing to provide the required contract performance security, and 24 for submitting inaccurate or false information in the course of procurement [22]. In accordance with Article 26 of the Rules for Procurement by the Joint Stock Company Sovereign Wealth Fund "Samruk-Kazyna" and legal entities in which more than fifty percent of the voting shares (participation interests) are directly or indirectly owned by JSC Samruk-Kazyna under ownership or trust management, the grounds for inclusion in the register of unfair suppliers are expressly established [23].

Another major platform in the field of procurement is the Eurasian Electronic Portal (<https://mitrowk.kz>). The Eurasian Electronic Portal serves as an online platform for conducting procurement procedures. It is utilized by holdings, national companies, and large commercial organizations for their procurement activities [24]. According to the data provided on this portal, 428 suppliers are currently registered in the register of unfair participants.

In the new public procurement legislation adopted in 2024 and effective from January 1, 2025, the concept of a unified procurement platform was introduced. The unified procurement platform is defined as the information system of the authorized body in the field of public procurement, which provides a single point of access to electronic procurement services carried out in accordance with the Law of the Republic of Kazakhstan "On Public Procurement" and the Law "On Procurement of Certain Entities of the Quasi-Public Sector". This platform operates through the portal <https://zakup.gov.kz/> and integrates the public procurement system of the Republic of Kazakhstan, the procurement of the Sovereign Wealth Fund "Samruk-Kazyna", as well as procurement in the field of subsoil use. An analysis of the functioning of this system demonstrates that, according to the platform's indicators, 18,552 suppliers are currently listed in the register of unfair participants in procurement [25]. These indicators do not correspond to the statistical data presented by the aforementioned three platforms. On certain platforms, registers of unfair participants are either not provided or access to them is restricted (e.g., <https://mp.kz>, <https://tizilim.gov.kz/>, and others). This, in turn, limits the possibility of obtaining comprehensive information about suppliers in tender relations. It should be noted that these platforms have a private character and cover specific sectors, which complicates the requirement for strict compliance with legal standards. An analysis of judicial practice demonstrates that these systems are not aligned within a unified model. If a supplier is recognized as an unfair participant on the public procurement portal, it is included in the register of unfair suppliers only within that portal and its activities are restricted solely in that framework. However, such restrictions are not extended to other platforms. For instance, if a supplier participates in public procurement on the web portal <https://goszakup.gov.kz/> and violates the grounds stipulated in subparagraph 4 of Article 8 of the Law on Public Procurement, it is recognized as an unfair supplier, yet it retains the ability to freely conduct its activities on other platforms, such as <https://zakup.sk.kz>, <https://mp.kz>, <https://tizilim.gov.kz>, [https://mitwork.kz/](https://mitwork.kz), and others.

Conclusion

In tender relations, the actions of unfair suppliers exert a negative impact not only on the economy but also on society at large. The proper organization and functioning of the procurement system directly affect the quality of services rendered, works performed, or goods supplied, as well as the establishment of trust among the parties engaged in procurement. In conclusion, the following definition may be proposed in accordance with the Law of the Republic of Kazakhstan "On Public Procurement" of July 1, 2024, No. 106-VIII: an unfair supplier is a potential supplier (contractor or service provider) entered into the register of participants in public procurement for failure to perform or for breach of contractual terms concluded through the public procurement web portal or other procurement systems of entities within the quasi-public sector.

To sanction unfair suppliers, the procurement system provides for their inclusion in the register of unfair suppliers, which restricts the supplier's activities for a period of two years. An analysis of judicial practice demonstrates that the absence of a unified system for maintaining the register of unfair suppliers in the procurement sphere contributes to an increase in the number of such participants. The consolidation of these registers would enhance the accountability of any supplier (entrepreneur) and encourage them to more carefully assess their position and capabilities before engaging in procurement activities. Each contract may involve two or more parties, and in matters of liability, it is inappropriate to consider only the responsibility of suppliers—attention must also be paid to the responsibility of contracting authorities. In judicial practice, the number of cases recognizing contracting authorities as unfair participants is extremely low. At the same time, when violations or errors arise on the part of the contracting authority, such issues are often resolved in a timely manner through the intervention of a third party, namely the procurement organizer. Nevertheless, in practice, situations frequently occur where, due to the contracting authority's inaccurate specification of technical requirements, the supplier is unable to properly fulfill its obligations, or where the supplier incurs losses as a result of the contracting authority's refusal to accept the deliverables. Accordingly, it is important to emphasize the necessity of strengthening the liability of both suppliers and contracting authorities.

References

немесе жанама тиесілі заңды тұлғалардың сатып алуды жүзеге асыру тәртібі. — [Электрондық ресурс]. — Қолжетімділік тәртібі: https://online.zakon.kz/Document/? doc_id=38404575&show_di=1.

23 «Самұрық-қазына» АҚ жылдық есебі. — 2023. — [Электрондық ресурс]. — Қолжетімділік тәртібі: https://ar2023.sk.kz/files/SK_ar2023_kaz.pdf.

24 Еуразиялық электрондық портал. — [Электрондық ресурс]. — Қолжетімділік тәртібі: <https://mitwork.kz>.

25 Қазақстан Республикасының Бірынғай сатып алу платформасы. — [Электрондық ресурс]. — Қолжетімділік тәртібі: <https://zakup.gov.kz/>.

Р.Б. Жагалов

Жосықсыз өнім берушілердің тізілімі мемлекеттік мұдделерді қорғау және сатып алу саласындағы бұзушылықтардың алдын алу құралы ретінде

Мемлекеттік сатып алу жүйесі мемлекеттік органдар мен жеткізушілерді байланыстыратын қарым-қатынастар жиынтығын білдіреді. Азаматтық айналымның тұрақтылығының негізгі факторларының бірі — келісімшарттық қатынастар тараптарының адалдығы мен сенімділігі. Мемлекеттік сатып алу жүйесінің мақсаты мемлекеттік қаржыны тиімді басқару, бюджет қаржатын ұтымды пайдалануды қамтамасыз ету және қоғамдық мұдделерді қорғау. Макалада елдің тендерлік ортасында туындастын жосықсыз контрагенттердің азаматтық-құқықтық жауапкершілігінің теориялық және практикалық аспектілері қарастырылған. Зерттеудің максаты — мемлекеттік сатып алушағы жосықсыз жеткізушілердің азаматтық-құқықтық жауапкершілігінің ерекшеліктерін анықтау, оны нығайту, жосықсыз жеткізушілер тізілімін жүргізуін маңыздылығын арттыру және қажетті заңнамалық ұсыныстарды әзірлеу. Зерттеу барысында ұлттық және шетелдік заңнамаға салыстырмалы талдау жүргізілді, сондай-ақ сот практикасы зерделенді. Қазақстан Республикасының заңнамасында «жосықсыз жеткізуші» ұғымын бекіту және сатып алу секторын қолдайтын цифровық платформаларда тиісті тізілімдерді бірлікті ұсынылады. Зерттеудің әдістемелік негізін формальды-логикалық, салыстырмалы-құқықтық, ғылыми-талдамалық, статистикалық және тарихи-құқықтық әдістер құрайды.

Кітт сөздер: тендер, мемлекеттік сатып алу, азаматтық-құқықтық жауапкершілік, жосықсыздық, айыппұл, тапсырыс беруші, жеткізуші, тізілім, келісімшарт, портал.

Р.Б. Жагалов

Реестр недобросовестных поставщиков как инструмент защиты государственных интересов и предотвращения нарушений в сфере закупок

Система государственных закупок представляет собой совокупность отношений, связывающих государственные органы и поставщиков. Одним из ключевых факторов стабильности гражданского оборота является честность и надежность участников договорных отношений. Целью функционирования системы государственных закупок выступает эффективное управление государственными финансами, обеспечение рационального использования бюджетных средств и защита общественных интересов. Статья посвящена теоретическим и практическим вопросам гражданско-правовой ответственности недобросовестных контрагентов, возникающих в сфере тендерных отношений в стране. Целью исследования заключается в выявлении особенностей гражданско-правовой ответственности недобросовестных поставщиков в сфере государственных закупок, ее усиливании, повышении значимости реестра недобросовестных поставщиков и выработке необходимых законодательных предложений. В ходе исследования проведен сравнительный анализ национального и зарубежного законодательства, а также изучена судебная практика. Предлагается закрепление в законодательстве Республики Казахстан понятия «недобросовестный поставщик» и интеграция соответствующих реестров на цифровых платформах, обеспечивающих сферу закупок. Методологическую основу исследования составили формально-логический, сравнительно-правовой, научно-аналитический, статистический и историко-правовой методы.

Ключевые слова: тендер, государственные закупки, гражданско-правовой ответственность, недобросовестность, штраф, заказчик, поставщик, реестр, договор, портал.

References

- 1 Memlekет basshysy Qasym-Zhomart Toqaevtyn «Adiletti Qazaqstannyn ekonomikalyq bagdary» atty Qazaqstan khalqyna Zholdauy [President Kassym-Jomart Tokayev's State of the Nation Address "Economic course of a Just Kazakhstan"] (n.d.). *akorda.kz*. Retrieved from <https://www.akorda.kz/ru/poslanie-glavy-gosudarstva-kasym-zhomarta-tokaeva-narodu-kazahstana-ekonomicheskiy-kurs-spravedlivogo-kazahstana-18588> [in Kazakh].
- 2 Zhagalov, R.B., & Akimzhanova, M.T. (2024). The legal essence of tender under the legislation of the Republic of Kazakhstan. *Bulletin of the Karagandy University. Law Series*, 3 (115), 171–177.
- 3 Zakony XII tablits [Laws of the XII Tables] (n.d.). *ancientrome.ru* Retrieved from <https://ancientrome.ru/ius/i.htm?a=1446588975&ysclid=mfdh1wiw7i885409635> [in Russian].
- 4 Novitskii, I.V. (2003). *Rimskoe parvo* [Roman law]. Moscow, 7th edition [in Russian].
- 5 Williamson, O.E. (1975). Markets and hierarchies, analysis and antitrust implications (p. 2630). New York: Free Press.
- 6 Qazaqstan Respublikasynyn Azamattyq kodeksi (Zhalpy bolim) [Civil Code of the Republic of Kazakhstan (General Section)]. (n.d.). *adilet.zan.kz*. Retrieved from <https://adilet.zan.kz/kaz/docs/K940001000> [in Kazakh].
- 7 Tolkovyi slovar Efremovoи [Efremova's Explanatory Dictionary]. (n.d.). *slovoonline.ru*. Retrieved from https://slovoonline.ru/slovar_efremova/ [in Russian].
- 8 Iliasova, G.A., Tokatov, R.A., Akimzhanova, M.T., Asetova, G.B., Myrzalieva, Zh.T., & Nukusheva, A.A. (2022). *Azamattyq quqyq zhane azamattyq is zhurgizu quqygy boiynsha zandyq terminderdin anyqtamalyq sozdigi* [A reference dictionary of legal terms on civil law and civil procedure law]. Qaragandy: «Akademik E. A. Boketov atyndagy Qaragandy universiteti» KeAQ baspasy [in Kazakh].
- 9 Sultanov, A.R. O vkluchenii v reestr nedobrosostnykh postavshchikov: o gosudarstve kak o zashchitnike praw i svobod cheloveka i kak o bezdumnoi mashine [On inclusion in the register of unscrupulous suppliers: on the state as a defender of human rights and freedoms and as a mindless machine] (n.d.). *pgplaw.ru* Retrieved from <https://www.pgplaw.ru/analytics-and-brochures/articles-comments-interviews/o-vklyuchenii-v-reestr-nedobrosostnykh-postavshchikov-o-gosudarstve-kak-o-zashchitnike-prav-i-svob/> [in Russian].
- 10 Suleimenov, M.K. Dobrosostnost v grazhdanskom prave: problemy teorii i praktiki [Good faith in civil law: problems of theory and practice] (n.d.). *online.zakon.kz* Retrieved from https://online.zakon.kz/Document/?doc_id=31637150&pos=5;-106#pos=5;-106 [in Russian].
- 11 Ivanova, S.A. (2019). Voprosy formirovaniia i vedeniia reestrov nedobrosostnykh postavshchikov v sferakh korporativnykh i publichnykh zakupok [Issues of forming and maintaining registers of unscrupulous suppliers in the areas of corporate and public procurement]. *Agrarnoe i zemelnoe parvo — Agrarian and Land Law*, 12 (180). Retrieved from <https://elibrary.ru/item.asp?id=42618645> [in Russian].
- 12 Beliaeva, O.A. (2012). Reestr nedobrosostnykh postavshchikov v sfere razmeshcheniya gosudarstvennykh i munitsipalnykh zakazov reguliertsia tolko na federalnom urovne [The register of unscrupulous suppliers in the area of placing state and municipal orders is regulated only at the federal level]. *Kommentarii sudebnoi praktiki — Commentary on judicial practice, Issue 17*, 154–166. K.B. Yaroshenko (Ed.). Moscow: Yuridicheskaya literatura [in Russian].
- 13 Demkina, A.V. (2008). Vkluchenie postavshchika v reestr nedobrosostnykh postavshchikov kak sposob zashchity [Including a supplier in the register of unscrupulous suppliers as a means of protection]. *Zakony Rossii: opyt, analiz, praktika — Laws of Russia: experience, practice, 12*, 120–123 [in Russian].
- 14 Federalnyi zakon «O kontraktnoi sisteme v sfere zakupok tovarov, rabot, uslug dla obespecheniya gosudarstvennykh i munitsipalnykh nujd» ot 05.04.2013 № 44-FZ [«On the contract system in the sphere of procurement of goods, works, and services to meet state and municipal needs» dated 05.04.2013 No. 44-FZ] (n.d.). *consultant.ru*. Retrieved from https://www.consultant.ru/document/cons_doc_LAW_144624/ [in Russian].
- 15 Shmeleva, M.V. Grazhdansko-pravovoe regulirovanie kontraktnykh otnoshenii pri gosudarstvennykh i munitsipalnykh zakupkakh v Rossiskoi Federatsii [Civil-law regulation of contractual relations in state and municipal procurement in the Russian Federation]. Retrieved from <file:///D:/%D0%80%D0%BD%D1%84%D0%BE%2021\%D0%90%D0%B2%D1%82%D0%BE%D1%80%D0%B5%D1%84%D0%B5%D1%80%D0%B0%D1%82%D1%8B%20%D0%BF%D0%BE%20%D1%82%D0%B5%D0%BC%D0%B5%20%D0%B4%D0%B8%D1%81%D1%81%D0%B5%D1%80%D0%B0%202025\autoref-grazhdansko-pravovoe-regulirovanie-kontraktnykh-otnoshenii-pri-gosudarstvennykh-i-munitsipal.pdf> [in Russian].
- 16 Kondratev, V.A. (2016). Opyt subektov predprinimatelskoi deiatelnosti kak kriterii opredeleniya pobeditelia torgov v forme konkursa [Experience of business entities as a criterion for determining the winner of a tender in the form of a competition]. *Imushchestvennye otnosheniia v Rossiskoi Federatsii — Property Relations in the Russian Federation*, 10, 8. Retrieved from <https://cyberleninka.ru/article/n/opyt-subektov-predprinimatelskoy-deyatelnosti-kak-kriteriy-opredeleniya-pobeditelya-torgov-v-forme-konkursa/viewer> [in Russian].
- 17 Memlekettik satyp alu turaly Qazaqstan Respublikasynyn Zany [Law of the Republic of Kazakhstan on Public Procurement] (n.d.). *adilet.zan.kz*. Retrieved from <https://adilet.zan.kz/kaz/docs/Z2400000106> [in Kazakh].
- 18 Memlekettik satyp alu salasynda tizilimderdi qalyptastyrudyn zhane zhurgizudin qagidalary [Principles of formation and maintenance of registers in the field of public procurement] (n.d.). *adilet.zan.kz*. Retrieved from <https://adilet.zan.kz/kaz/docs/V240035143> [in Kazakh].
- 19 Obobshchenie sudebnoi praktiki po sporam v sfere gosudarstvennykh zakupok (Sudebnaia kollegiia po grazhdanskim delam Verkhovnogo Suda Respubliki Kazakhstan, 26 fevralia 2021 goda) [Summary of Judicial Practice on Disputes in the Field of Public

Procurement (Civil Collegium of the Supreme Court of the Republic of Kazakhstan, February 26, 2021)] (n.d.). *online.zakon.kz*. Retrieved from https://online.zakon.kz/Document/? doc_id=39047813&pos=0;0 \I «pos=0;0 [in Russian].

20 Ujednolicony przez Urząd Zamówień Publicznych tekst ustawy z dnia 11 września 2019 r. — Prawo zamówień publicznych [Public procurement law] (n.d.). *www.gov.pl*. Retrieved from <https://www.gov.pl/web/uzp/prawo-zamowien-publicznych-2019> [in Polish]

21 Qazaqstan Respublikasynyn memlekettik satyp alular portaly [Public Procurement Portal of the Republic of Kazakhstan] (n.d.). *goszakup.gov.kz*. Retrieved from <https://goszakup.gov.kz> [in Kazakh].

22 «Samuryq-Qazyna» ultiyq al-auqat qory» Aktsionerlik qogamynyn zhane dauys beretin aktsiialaryny (qatysu ulesterinin) elu zhane odan kop paisyzy menshik nemese semimgerlik basqaru quqygymen «Samuryq-Qazyna» AQ-ga tikelei nemese zhanama tiesili zandy tulgalardyn satyp aludy zhuzeye asyru tartibi [The procedure for the sale of shares (participation shares) of the Samuryq-Qazyna National State Fund Joint Stock Company and voting rights and the right to own or manage a significant percentage of them directly or indirectly to Samuryq-Qazyna JSC was established]. (n.d.). *online.zakon.kz*. Retrieved from https://online.zakon.kz/Document/? doc_id=38404575&show_di=1 [in Kazakh].

23 «Samuryq-qazyna» AQ zhyldyq esebi. 2023 [Annual report of Samruk-Kazyna JSC for 2023]. (n.d.). *ar2023.sk.kz*. Retrieved from https://ar2023.sk.kz/files/SK_ar2023_kaz.pdf [in Kazakh].

24 Eurazialyq elektrondyq portal [Eurasian electronic portal]. (n.d.). *mitwork.kz*. Retrieved from <https://mitwork.kz> [in Kazakh].

25 Qazaqstan Respublikasynyn Biryngai satyp alu platformasy [Unified Procurement Platform of the Republic of Kazakhstan]. (n.d.). *zakup.gov.kz*. Retrieved from <https://zakup.gov.kz/> [in Kazakh].

Information about the authors

Zhagalov Rustem — Master of jurisprudence, Doctoral student, Karaganda National Research University named after academician Ye.A. Buketov, Karaganda, Kazakhstan; e-mail: jagalov.rus@mail.ru.