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APPEALS IN PUBLIC PROCUREMENT PROCEDURES, IN THE CONTEXT OF SUSTAINABILITY AND ECONOMIC RESILIENCE

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Abstract: *Appeals, in public procurement procedures, are an essential mechanism to ensure transparency and respect for competition principles. The aim of the research is to analyze the influence of appeals on the efficiency of procurement processes, economic sustainability and resilience of projects financed from public funds. The methodology applied in this study includes a comparative and qualitative analysis of the procedural framework and practices in two European countries: France and Estonia. The study examines the impact of appeals on implementation deadlines, additional costs and the quality of decision-making by contracting authorities. The results show that, while appeals may cause delays, they contribute to correcting procedural deficiencies and strengthening institutional accountability. For example, in France, the existence of specialized administrative courts supports efficient dispute resolution, and in Estonia, extensive digitization supports transparency and the application of environmental criteria in procurement. The research findings argue that the existence of a clear and effective appeal mechanism is a key determinant in aligning public procurement processes with the principles of sustainability and economic resilience.*

Keywords: *Public procurement procedures, public procurement appeals, principles governing the appeals resolution stage, examination and resolution of appeals, transparency, objectivity, fair competition, sustainability, economic resilience.*

UDC: ***351.712***

JEL classification: *H57, F52, K22.*

1. Introduction

In public procurement, appeals are an essential mechanism for ensuring transparency, fairness and fair competition in the allocation of public funds. However, in practice, their frequency and duration can lead to significant delays of public projects, affecting strategic investments, including those financed by external funds. In a context where sustainability and economic resilience are political and administrative priorities, the question arises as to how appeals influence the conduct of public procurement procedures and to what extent do they affect the objectives of sustainability and economic resilience?

In public procurement, contracting authorities are obliged to follow strict procedures to select suppliers or service providers, but situations may arise in which economic operators consider that the decisions taken did not comply with legal principles or did not ensure fair treatment. Thus, in this study, we set out to achieve a general objective, namely to identify the need to analyze the impact of appeals on the efficiency and sustainability of public procurement procedures in the context of sustainable development and strengthening economic resilience. As specific objectives, we can mention the identification of the main causes and types of appeals in public procurement procedures; the assessment of the duration and frequency of appeals and their impact on the performance of public procurement contracts; the determination of the perception of

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contracting authorities on the role and effects of appeals; and the balancing of the right to appeal with the need for rapid implementation of sustainable public projects.

Therefore, in public procurement procedures, appeals can significantly influence the pace and efficiency of public investments, and their proper management is essential to ensure economic sustainability and resilience, especially in the current context of multiple crises (health, climate, geopolitical, etc.).

In the context of a unitary European regulatory framework, the review procedure allows any economic operator to bring a case before a specialized authority or the courts if it considers that its rights have been infringed during a public procurement procedure. This right of review has a dual role: it provides a means of redress for operators who have been harmed and, at the same time, it contributes to improving the public procurement system by preventing and correcting errors and abuses.

Each country's public procurement law imposes clear rules on the conduct of the appeal procedure, the time limits and the conditions under which appeals can be lodged, in order to protect both the rights of economic operators and the public interest in conducting procurement in an efficient and responsible way.

2. Methodology

Over time, appeals have become a critical component of the public procurement process, ensuring compliance with the principles of transparency, non-discrimination and efficient use of public funds. At European Union level, Member States have developed mechanisms adapted to European legislation, but also to national specificities, to allow economic operators to appeal decisions considered incorrect.

Among the most important research methods that have added value to the study carried out in this article are: documentary analysis, comparative analysis, synthesis, the method of induction and deduction, etc. Equally important is the application of SWOT analysis, thanks to which we have assessed the strengths, weaknesses, opportunities and threats in the management of appeals in public procurement in the context of the objectives of sustainability and economic resilience, with the aim of identifying the most important aspects to be improved in the management of appeals and developing recommendations for improving the process. These methods have allowed us to obtain effective results that will contribute to a deeper understanding of the impact of appeals on public procurement and economic sustainability.

Thus, the appeal procedure in public procurement is a pillar of the integrity of the procurement system and of the protection of economic operators, contributing to the consolidation of a healthy competitive environment and to the sound management of public resources.

3. Results and Discussion

Public procurement procedures are complex and generate multiple legal problems for both the contracting authorities and the economic operators involved. Often, these legal disputes are resolved by the National Agency for the Settlement of Disputes (ANSC).

According to the provisions of Article 80 of Law no. 131 [1, art. 80], ANSC is an autonomous public authority, independent from other public authorities, individuals and legal entities, which examines the appeals filed in public procurement procedures. ANSC is a legal person under public law, financed from the state budget, within the limits of the budgetary allocations approved by the annual budget law. ANSC has organizational, functional,

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operational and financial independence. Its budget is drawn up, approved and administered in accordance with the principles, rules and procedures laid down by Law No. 181[2].

The Agency presents an annual performance report, including data and analysis on appeals cases, to the Parliament in plenary session by March 15 each year [1].

It is relevant to mention, in this context, the role of the principles that govern the stage of settling appeals. Therefore, in the performance of its main activity, the settlement of appeals lodged by economic operators in the procedures for the award of public procurement contracts, ANSC ensures the consistent application of the legislation in force, in accordance with the principles of law expressly regulated by the decisions adopted in the exercise of its powers:

- *Celerity*, i.e. the resolution by the ANSC of all appeals submitted by interested economic operators on public procurement procedures, within a reasonable and predictable timeframe.
- *Legality* - in the appeals process. This principle implies that, both in the organization of the appeals settlement and in the settlement procedure, the ANSC and all those concerned must strictly comply with the international agreements to which the Republic of Moldova is a party, the fundamental law and other subordinate normative acts.
- *Contradictory* - the parties to the proceedings have an obligation to set out the facts to which their claims and defenses relate fairly and completely, without misrepresenting or omitting facts known to them. The parties are under an obligation to set out their own views in relation to the opposing party's assertions of factual circumstances relevant to the case. ANSC will organize open hearings with the participation of the parties concerned for the examination of objections, i.e. it will base its Decision only on factual and legal grounds, explanations or evidence which have been submitted in advance for adversarial debate.
- *Right of defense* - the parties have the right, throughout the proceedings, to be represented or, where appropriate, assisted according to the law.

The subject of the appeal procedure may be any person who meets 2 cumulative conditions: who has or has had an interest in obtaining a public procurement contract; who considers that, in the context of public procurement procedures, an act of the contracting authority has infringed a right recognized by law, as a result of which he has suffered or may suffer prejudice. Only the cumulative fulfilment of these two conditions confers legal standing on the challenger.

The aggrieved economic operator may refer the matter to the ANSC in order to annul the act and/or to recognize the alleged right or legitimate interest by filing a appeal. Thus, the following terms shall be respected when filing the contestation: 5 days, if the estimated value of the public procurement contract for goods/services is less than 2,300,000 lei and less than 90,000,000 lei in case of works procurement; 10 days if the estimated value of the public procurement contract for goods/services is greater than or equal to 2,300,000 lei and greater than or equal to 90,000,000 lei in case of works procurement. [3]

The appeal shall be submitted in written form, in the state language, signed and, where appropriate, stamped and shall contain:

a) the name, domicile or residence of the contestant or, for legal entities, the full name of the economic operator, the name and surname of its representative, a copy of the document confirming the powers of attorney, the legal address and contact details;

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b) the name of the contracting authority, its legal address and contact details;
c) the subject of the public procurement contract and the tender procedure applied;
d) the essence and basis of the challenge, indicating the rights and legitimate interests of the challenger, infringed in the public procurement procedure;
e) the nomenclature of documents attached to the contestation.

The appellant shall also attach to the appeal a copy of the contested act, if it has been issued, as well as copies of the documents referred to above, if available. [4]

In most European countries, the function of reviewing and settling appeals in the field of public procurement is entrusted to judicial bodies (administrative or civil). In some countries, the review function (in the first instance) is entrusted to an independent institution specialized in the settlement of public procurement disputes, such as: Estonia (Public Procurement Complaints Commission) [5, p. 55].

In Estonia, the public procurement challenge procedure is regulated by the Public Procurement Act and other specific regulations. Appeals are an essential mechanism for protecting the interests of economic operators and ensuring transparency and fairness in the public procurement process.

Before analyzing some steps on the proper conduct of the examination of appeals in public procurement, we would like to mention that the efficient use of public money requires following a balanced, well-determined route, from highlighting the best procurement procedures to effective control. National economic economic security is also described by the phenomenon of the public procurement contract, which will take into account the rigors imposed by the legislator, respecting the fundamental principles and capitalizing on concepts such as good management of public money, green procurement, wise procurement, managerial quality control, by involving with the responsibility of all participating actors. [6, p. 197].

Filing the appeal. Economic operators who consider that they have been unfairly treated in a public procurement procedure can lodge a challenge. Appeals may relate to any stage of the procurement procedure, including: violation of the conditions for participation; violation of the principles of transparency, equal treatment and non-discrimination; contract award decisions.

The deadline for lodging an appeal is specifically regulated and varies depending on the nature of the contested act. Typically, the time limit for lodging an appeal is 10 working days from the date on which the participant became aware of the contested act or decision. It may be shorter depending on the specifics of the procedure.

Competent authority for settling appeals

In Estonia, public procurement disputes are handled by the Public Procurement Office or, in some cases, by the courts.

The Office for Public Procurement is the administrative authority responsible for examining and settling appeals. It can take measures such as: annul or modify administrative acts of the contracting authority; suspend the public procurement procedure. If a party disagrees with the decision of the Public Procurement Office, it can appeal to the courts, which will examine the legality of the decision.

Settlement of the appeal. The Public Procurement Office must settle the appeal within a reasonable time. Usually, the time limit for settling a challenge is 15 working days, but may be extended in certain circumstances, depending on the complexity of the case. After considering the appeal, the Office may decide:

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- Rejects the appeal: If it considers that there are no legal grounds to amend or annul the contracting authority's decision.
- Accept the appeal. If infringements of the law or fundamental principles of public procurement are found, the Office may order measures such as: suspension of the public procurement procedure; review of the contracting authority's decision; annulment of a stage of the procurement procedure; annulment of the entire procurement procedure in serious cases of infringement of the regulations.

Appeals. If a party is not satisfied with the decision of the Public Procurement Office, it can ask the courts to review the decision. The courts competent to hear appeals in the field of public procurement are usually administrative courts.

Administrative appeals are quicker than court proceedings, but if the courts are seized, they can examine the legal and procedural aspects of the case in more detail. Estonian administrative courts may also temporarily suspend the procurement procedure pending a final decision.

Interim measures. If the public procurement procedure is found to be flawed or if a participant's rights are infringed, the Public Procurement Office may order interim measures. For example, it may suspend the procurement procedure until the final decision on the complaint.

Effects of the appeal on the procurement procedure. In Estonia, the submission of a appeal may have a suspensive effect on the public procurement procedure. This means that, in certain circumstances, the contracting authority may not conclude the procurement contract or complete the stages of the procedure until the appeal has been resolved. However, the contracting authority may require the procedure to continue if there are justified reasons.

Penalties for non-compliance with decisions. If the contracting authority does not comply with a decision of the Public Procurement Office or a court decision on public procurement, it may be sanctioned. Penalties may include financial penalties or even invalidation of the procurement contract, depending on the seriousness of the infringement.

Therefore, appeals in the public procurement process in Estonia are an important component in ensuring the transparency and fairness of procurement procedures. They allow economic operators to defend their rights and interests when they consider that they have been victims of illegal or unfair practices in the procurement process. They are dealt with by the Public Procurement Office and, in case of dissatisfaction, they can appeal to the administrative courts. [7]

In France, the appeal procedure in public procurement is governed by the Public Procurement Code and other specific legislation. Appeals are essential to ensure transparency, competition and respect for fundamental principles in the public procurement process. The French system provides several mechanisms through which participants in a procurement procedure can challenge a decision or action of the contracting authority. [8]

Filing the appeal. Economic operators who consider that they have been unfairly treated in a public procurement procedure may lodge a complaint with the contracting authority or, subsequently, with the competent court.

Types of appeals: administrative appeals: These are lodged against administrative decisions of the contracting authority, such as the selection of tenders or the award of a procurement contract. *Judicial appeals:* If administrative challenges are not resolved

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favorably, or if there is a violation of the rights of the participants, they can appeal to the administrative courts to challenge the contracting authority's decisions.

Submission deadline. In France, appeals must be filed within 30 days of the date of publication of a decision that may affect a participant's rights (e.g. publication of the results of the procurement procedure or notification of a winning bid).

Settling appeals. Appeals are usually resolved in two stages:

a) *Administrative appeal.* First of all, participants in a public procurement procedure may lodge an administrative challenge with the contracting authority. This may be a local or central authority, depending on the nature of the procurement. The contracting authority is obliged to reply within 15 days of the submission of the challenge, but in practice this period may vary. Depending on the circumstances, the contracting authority may reject the challenge if it considers that the procedure was fair; suspend the procurement procedure if it identifies infringements that could affect the conduct of the procedure; or modify the decision or procedure if the challenge is justified.

b) *Judicial appeal.* If the administrative appeal is not satisfactory or if the economic operator considers that his rights have been infringed, he may appeal to the administrative courts. The administrative courts are the courts competent to hear appeals in the field of public procurement. The administrative tribunal is the competent judicial authority which examines the legality of the procurement procedure and may order remedies. An important role here is played by the Administrative Court of Appeal (Cour Administrative d'Appel), which can examine appeals against decisions of the administrative tribunals. [8]

The administrative courts may suspend the procurement procedure, amend the contracting authority's decisions or annul the entire procurement procedure if substantial breaches of the law are found.

Provisional measures. One of the important features of the appeal procedure in France is the possibility to apply interim measures to protect the rights of participants. For example, the administrative courts may order: the suspension of the procurement procedure to prevent the conclusion of the procurement contract pending the outcome of the challenge; a prohibition on signing the contract until the appeal is resolved. These measures are essential to ensure that the rights of economic operators are not irrevocably affected during the procurement procedure.

If we are to analyze *the remedies*, we can mention that, in France, decisions taken by the administrative courts can be challenged by an appeal to the Administrative Court of Appeal. However, the appeal is only admissible on a legal ground (e.g. errors of interpretation of the law or procedure). In certain cases, the Court of Cassation can be seised to review the decisions of the Administrative Courts of Appeal, but this is a procedure of last resort, limited to important legal issues.

Effects of appeals on the procurement procedure. Filing a appeal in France can affect the procurement procedure to a significant extent. Typically, filing a appeal: suspends the procurement procedure, i.e. the contracting authority cannot sign the contract or move forward with the final stage of the procedure until the appeal is resolved. Or it can overturn previous decisions of the contracting authority, for example, if the court or competent authority considers that fundamental principles of public procurement (e.g. transparency, non-discrimination) have been infringed.

In general, appeals are settled quickly and interim measures are often put in place to minimize potential damage.

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Penalties for violating procurement procedures. If the contracting authority does not comply with the decisions of the court or the competent administrative authorities, there may be sanctions, including financial penalties or invalidation of the contract awarded. In addition, the authorities may be obliged to pay damages to economic operators who have suffered harm due to an incorrect procurement procedure.

Relevant issues in appeal procedures. Appeals are essential in ensuring a fair and transparent public procurement process, and in France, the protection mechanisms are well regulated and effective. Some of the key issues that may be subject to appeals include [8]: violation of the principles of transparency and non-discrimination; unjustified modification of the participation requirements; selection of a winning bid in a way that does not comply with the criteria set out in the procurement documentation.

In France, appeals in public procurement procedures are governed by a detailed legal framework which guarantees the protection of the rights of participants and ensures the transparency and fairness of the procedures. Such appeals can be settled administratively or judicially, and protective mechanisms such as interim measures are essential to prevent irreparable harm.

At the current stage, the circular economy formation mechanism, in the Republic of Moldova, includes a complex series of procedures, tools, processes that have a particular relevance to the transition from the linear economy to the circular economy. The spectrum of the rights of individuals to participate in the public procurement process, in the European Union states, can be seen as guaranteed and necessary to be implemented, thanks both to the substantial, beneficial changes provided for in the European directives, as well as to the existing good practices in the field concerned [9, pp. 108].

In their study on sustainable public procurement, the Lithuanian researchers consider that "...taking into account the best foreign practice it is also recommended to consider taking specifc measures both in encouraging contracting authorities to apply the social requirements in public procurement and developing socially-oriented business competencies to participate in such proceedings. Social public procurement (as well as in general public procurement) is a field of research which requires interdisciplinary approach. Designing future research implications in this feld it is recommended to pay attention towards separate aspects of the problem as the need of application of certain stimulation measures (both managerial and legal), requirements for social enterprises and its implementation as well as in managerial level analyzing in general demand and supply issues in this section of market". [10, pp. 313].

In order to better understand how different European countries deal with appeals in public procurement procedures and their impact on the implementation of sustainable projects, a brief comparative analysis of some of the above issues (between Moldova, France and Estonia) was carried out. These three countries offer distinct perspectives: Moldova, with a well-functioning but often cumbersome system vulnerable to unjustified appeals; France, with a well-structured but more rigid administrative framework; Estonia, recognized for its advanced digitalization of public administration and efficient decision-making processes.

The analysis focuses on key elements such as the institutional framework, the length of time it takes to resolve appeals, the degree of digitization, preventive mechanisms and how projects impacting on sustainability and economic resilience are affected. The results are summarized in the table below (See Table 1.).

The results of the comparative analysis highlight the fact that the efficiency of the appeals process does not depend exclusively on legal regulations, but mainly on the *degree*

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of digitization, the preventive mechanisms put in place and the prioritization of strategic projects. The Estonian model provides a best practice example of speed, transparency and adaptability, while the French system illustrates the importance of institutional rigor. Moldova has an accessible framework, but a reform geared towards digitization and efficient filtering of challenges is needed to better support public projects with an impact on sustainability and economic resilience.

Table 1. Appeals in public procurement - Moldova vs. France vs. Estonia

Criteria	Moldova	France	Estonia
Competent body for resolution	ANSC (National Agency for the Settlement of Appeals); then administrative courts	Tribunal Administratif (administrative courts)	Public Procurement Review Committee; administrative courts where appropriate
Average settlement time	(Approximately 20 days at ANSC); the appeal in court can take months.	Variable, (about 30-60 days); relatively fast procedures for emergencies.	Fast: (about 10-15 days to committee), with a focus on digitization.
Costs for the challenger	Relatively low (modest fee), affordable for most economic operators.	Higher than in Moldova; depends on the value of the contract.	Very low; encourages contestation only if justified.
Digitization	Electronic system (SEAP) still being modernized.	Administrative portals for submitting documents, but the procedure is not fully digitized.	Fully digitized system; procedures move quickly online.
Appeal prevention measures	Limited; lack of effective prior dialog mechanisms.	Competitive dialog and clarifications are encouraged.	Prior mediation recommended in certain cases.
Impact on sustainable projects	Procedures can be seriously delayed by appeals, including for green projects.	Strategic projects can be accelerated through controlled derogations.	Appeals are handled quickly, avoiding bottlenecks in green projects.
Regulations on ecological criteria	Although legally allowed, they are rarely used (green procurement <5%).	Frequently included; French legislation encourages sustainable procurement.	Very well integrated; Estonia has an actively implemented green procurement strategy.

Source: Author (based on researched data)

We reiterate that according to the National Program for the Development of the Public Procurement System for 2023-2026, Chapter IV, point 60 [11], public procurement is a necessary tool for achieving smart, sustainable and inclusive growth. This tool could have an impact on economic growth, employment growth and cross-border trade. And the harmonization of public procurement legislation with the EU acquis, in particular the clear designation of the authorities/entities that apply the regulatory provisions and the means of appeal for each mode of contract award is expected to be achieved by 2026.

4. Conclusions

1. Appeals are a fundamental mechanism for ensuring transparency and fairness in the public procurement process. However, their excessive or abusive use can have a negative impact on the efficient implementation of public projects, especially those with strategic relevance for the green and digital transition.
2. In the Republic of Moldova, the procedural framework for resolving appeals is generally accessible and well regulated. However, shortcomings persist related to the length of the process, the absence of full digitization and the lack of effective

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mechanisms to filter unfounded appeals, which leads to significant delays in contract execution.

3. Projects focusing on sustainability and economic resilience are particularly at risk of procedural bottlenecks, as they involve strict deadlines, limited funding (including EU funds) and environmental criteria that can be easily challenged, often through ignorance or bad faith.
4. The comparative analysis with France and Estonia shows that extensive digitization (Estonia) and the existence of specialized and hierarchical administrative courts (France) contribute significantly to the efficiency of the appeals process.
5. The lack of preventive measures, such as pre-contest clarification mechanisms or preliminary filters, favors an increase in the number of contestations and negatively affects the authorities' capacity to quickly implement projects with high socio-economic impact.
6. A sustainable and efficient public procurement system requires the integration of modern, digital and selective solutions for the management of appeals, capable of simultaneously protecting the legitimate rights of economic operators and the public interest associated with strategic investments.
7. And last but not least, increasing institutional capacity in the field of public procurement requires continuous investment in the training of actors involved in the resolution of appeals, so that they can consistently and effectively apply the principles of legality, transparency and sustainability.

Therefore, the implementation of structural reforms in the appeals system, inspired by European best practices, is indispensable for strengthening the institutional capacity to implement sustainable, efficient public projects aligned with the objectives of sustainability and economic resilience.

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