

PURCHASE OF LEGAL CONSULTING AND LEGAL REPRESENTATION SERVICES

AQUISIÇÃO DE SERVIÇOS DE CONSULTORIA JURÍDICA E DE REPRESENTAÇÃO JURÍDICA

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Received: 15 Fev 2023

Accepted: 30 May 2023

Published: 10 Jun 2023

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Abstract: The topicality of the article lies in the fact that in the conditions of the re-codification of the Civil Code of Ukraine, military aggression against Ukraine, changes in economic relations, and the adoption of new regulatory and legal acts as a reaction to these changes, customers and participants in public procurement deserve proper legal protection of their rights and interests. Yet, most relationships are not only complicated by their legal nature but also require the actual participation of representatives in procedural relations, which is why there is a constant demand for legal consulting and legal representation services. In this article, the authors point to the dynamics of public procurement procedures for the purchase of legal consulting and legal representation services. Scientific works devoted to considering issues of state procurement of legal consulting and legal representation services have been summarized. The main conceptual contradictions between the contract for purchasing legal consulting and legal representation services and civil law consulting have been established and characterized. The article also examines the current problems of public procurement of legal services in Ukraine and EU countries, as well as possible transformational changes in the field of public procurement in the post-war period.

Keywords: Tender. Public procurement. Contract. Purchase contract. Legal services. Legal services contract. Legal consulting. Legal representation.

Resumo: A atualidade do artigo está no fato de que, nas condições da recodificação do Código Civil da Ucrânia, da agressão militar contra a Ucrânia, das mudanças nas relações econômicas e da adoção de novos atos regulatórios e legais como reação a essas mudanças, os clientes e participantes de contratos públicos merecem a proteção legal adequada de seus direitos e interesses. No entanto, a maioria dos relacionamentos não é apenas complicada por sua natureza jurídica, mas também exige a participação efetiva de representantes nas relações processuais, razão pela qual há uma demanda constante por serviços de consultoria jurídica e representação legal. Neste artigo, os autores apontam a dinâmica dos procedimentos de compras públicas para a aquisição de serviços de consultoria jurídica e representação legal. Foram resumidos os trabalhos científicos dedicados à consideração de questões de compras públicas de serviços de consultoria jurídica e representação legal. As principais contradições conceituais entre o contrato de compra de serviços de consultoria jurídica e representação legal e a consultoria de direito civil foram estabelecidas e caracterizadas. O artigo também examina os problemas atuais de

compras públicas de serviços jurídicos na Ucrânia e nos países da UE, bem como as possíveis mudanças transformacionais no campo das compras públicas no período pós-guerra.

Palavras-chave: Concurso. Contratos públicos. Contrato. Contrato de compra. Serviços jurídicos. Contrato de serviços jurídicos. Consultoria jurídica. Representação jurídica.

1. Introduction

In the national legislation of the State of Ukraine, public procurement was introduced after the adoption of the order of the Cabinet of Ministers “On measures to prepare and hold an international tender to solve the problem of transforming the “Shelter” facility of the Chernobyl Nuclear Power Plant into an environmentally safe system” dated August 12, 1993, № 604-p. The very first tender in our country had the characteristics of a representative one, as it authorized the Minister for the Protection of the Population from the Consequences of the Chernobyl NPP accident and his deputies to act on behalf of the Government of Ukraine in the named international organizations during the implementation of measures related to the preparation and conduct of the tender, as well as during international negotiations aimed at finding the necessary sources of funding for the mentioned works.

Since 1997, the public procurement procedure was introduced for all government customers in Ukraine in accordance with the resolution of the Cabinet of Ministers of Ukraine “On the organization and conduct of bidding (tenders) in the field of public procurement of goods (works, services)” dated June 28, 1997, № 694 (Zaitsev O.L., 2017). Adopted on September 19, 2019, the Law of Ukraine “On Amendments to the Law of Ukraine “On Public Procurement” and some other legislative acts of Ukraine on the improvement of public procurement” № 114-IX contains the quintessence of 25 years of work on the continuous improvement of the public procurement procedure by the legislator. Also, some other legislative acts of Ukraine on the improvement of public procurement were developed with the aim of implementing key concepts and basic elements of Directives 2014/24/EU and 2014/25/EU into the legislation of Ukraine.

The signing of the Association Agreement between Ukraine and the EU became the basis for introducing European standards and principles, including in the field of public procurement (Zaitsev O.L., Iasechko S.V., 2021). The Association Agreement stipulates that the Parties recognize the contribution of a transparent, non-discriminatory, competitive, and open tender process to sustainable economic development and set the effective, mutual, and gradual opening

of relevant procurement markets as their goal. Articles 148-156 of Chapter 8 “Government procurement” of Section IV “Trade and issues related to trade” and Appendix XXI to Chapter 8 of the Association Agreement are devoted to the implementation of these tasks.

The system of legal regulation of public procurement in the European Union is three-level; these are international norms, the legislation of the European Union, as well as the national legislation of individual countries.

Thus, all EU countries rely on EU Directive 2014/24/EU and 2014/25/EU during the conduction of procurement. It is applicable to both state bodies and private companies. According to this directive, if the contract amount exceeds a certain threshold, a public tender must be held.

Nevertheless, almost every European country has national procurement legislation. In the Czech Republic, for example, this is Law No. 134/2016 Coll., Act on Public Procurement ("APP"), in Austria - Bundesvergabegesetz 2018 (BVerG 2018) and Von der Europäischen Kommission festgesetzte Schwellenwerte für Auftragsvergabeverfahren ab 1. Jänner 2018 (BGBl. II Nr. 411/2017), in France - the Public Procurement Code dated April 1, 2019. All these laws are very different, which is why purchasing legal services in Europe is of the greatest interest.

If we talk about the methods of procurement in the EU, they can be diverse: open and closed tenders, requests for quotations, procurement from a single source, requests for proposals, and competitive negotiations.

To create equal business conditions across Europe, EU legislation sets minimum harmonized rules for public procurement. These rules govern how public authorities and certain utility operators buy goods, works, and services. They are transferred into the national legislation and apply to tenders whose monetary value exceeds a certain amount. National rules apply for lower-value tenders. Nevertheless, these national rules must also comply with the general principles of EU law.

A special minimum threshold has been established for public procurement in EU countries, and it is different in all countries. For example, in the Czech Republic, there is a simplified procedure for this type of procurement. Thus, the customer has the right not to use public procurement for:

- Legal services for representing interests in court proceedings, administrative proceedings in front of courts, arbitration courts (arbitrages) and administrative bodies, including in front of international judicial bodies;

- Legal services provided during preparation for participation in the processes specified above, or if the circumstances lead to the conclusion that the case will be considered during the specified processes. In the Czech Republic, public contracts, from the point of view of the expected volume, can be divided into those above the specified threshold, below the specified threshold, and small-scale projects.

In France, the procurement of legal services has long been considered incompatible with public procurement rules, given the legislation applicable to the legal profession and their ethical obligations (Law № 71-1130 dated 31 December 1971, amended the reform of certain judicial and legal professions). The decree of February 27, 1998, added contracts for the provision of services, “the object of which is legal services”, to the list of contractual contracts, the conclusion of which, if their sum exceeds the threshold of 300,000 francs, must be preceded by a preliminary tender for participation in the competition. A significant part of the representative bodies of the profession then contested this decree. Unfortunately, in the judgment dated April 9, 1999, Toubol-Fisher, № 196177, Conseil d’Etat, confirmed that “no principle prevents the contracts concluded between a lawyer and a public body for the legal representation of the latter and must be preceded by a preliminary procedure of competitive bidding”.

This position will remain until the beginning of 2014. In addition, Directive 2014/24/EU dated February 26, 2014, on the conferment of public contracts excluded from the scope of application contracts for legal services for legal representation or consultations related to such representation, as well as the provision of legal advice for an amount of less than € 750,000 excluding taxes (Articles 4 and 10 of Directive 2014/24).

According to Articles 130 and 140 of Law № 2020-1525, dated December 7, 2020, on the acceleration and simplification of public actions (known as the ASAP Law), Decree № 2021-357 dated March 30, 2021, introduced various changes in the field of public procurement. This decree enables the implementation of a long-standing demand of the legal profession, promoting the free choice of a lawyer in contentious or pre-trial proceedings.

Article 140 of the ASAP Law, dated December 7, 2020, has already amended Article L. 2512-5 of the Public Procurement Code, which contains a list of public contracts that can be concluded without announcement and competitive bidding:

- Legal services for legal representation of the client by a lawyer in the framework of the jurisdictional procedure, in front of state authorities or international institutions, or in the framework of an alternative method of dispute resolution;

- Legal advisory services provided by a lawyer in preparation for any of the above proceedings or when there are real indications and a high probability that the matter on which the advice is provided will become the subject of such proceedings.

Decree № 2021-357 dated March 30, 2021, completes this legislative change by amending Article R. 2123-2 of the Code of Public Order. Therefore, the wording “with the exception of the legal representation services mentioned in point 4° [Article L. 2123-1]” has been removed from the new article.

Thus, now in France, two categories of public procurement of legal services are not subject to the rules for the preparation and conclusion of public contracts. Such services include:

- Legal representation of the client by a lawyer within the framework of a court procedure or within the framework of a conciliation procedure;
- Legal consultations in connection with court proceedings.

Thereby, government customers can turn to legal firms without formalized or adapted procedures, regardless of the amount of the service, when the purpose of such assistance is to provide legal representation of the customer in front of:

- Judicial bodies;
- State authorities;
- International institutions;
- Alternative means of dispute resolution.

Public customers may also seek their advice, without advertising or competition, in the context of consulting services for the preparation of the aforementioned procedures or when there is a risk of litigation arising from the subject matter of the consulting mission.

So, for legal services directly or indirectly related to the judicial procedure, government customers will now have the opportunity to refuse competitive bidding. Competition between providers of legal services was not inconsistent with rules specific to the legal profession, including ethical rules such as:

- The secret of the relationship between the lawyer and their client;
- The principle of free selection of a lawyer;
- Prohibition of solidarity;
- Competence of the President regarding the appeal of fees, etc.

In addition, Directive 2014/25/EU was transposed excessively, which led, instead of the promised flexibility, to the most Byzantine regime, as follows:

- In principle, the provision of legal services was subject to an adapted procedure (the only flexibility is that this procedure remained adapted, regardless of the amount of the contract);

- As an exception, certain legal services are excluded from the sphere of public procurement:

- a) Services for certification and authentication of documents, which must be provided by notaries;

- b) Services provided by administrators, guardians, or service providers appointed by a jurisdiction or by law to perform specific tasks under the jurisdiction's control;

- c) Services related, even sometimes, to the exercise of state power.

- The balance, i.e. legal representation and pre-litigation advice, is subject to a “very simplified” procurement regime which, however, clearly resembles an adapted procedure, and is subject to strict advertising and competition;

Such a regime was, however, incompatible with the European position. It clearly follows from the decision of the Court of Justice of the European Union dated June 6, 2019 (PM, et al. c/Ministerraad, case C-264/18), which confirms that in matters of representation in courts, the relationship between the public client and their lawyer requires a strong personal connection (*intuitu personae*) and the most absolute confidentiality, incompatible with public procurement obligations.

In the case of P.M. and others v Ministerraad, C-264/18, ECLI:EU:C:2019:472, the ECJ has ruled that certain legal and arbitration services are lawfully excluded from the operation of Directive 2014/24.

The Court of Justice of the European Union (CJEU) has ruled on the exclusion of arbitration and conciliation services and of certain legal services from Directive 2014/24/EU. In the recent judgment on the P.M. e aCase, the Court expressed on the validity of the provisions of Article 10(c) and (d)(i), (ii) and (v) of Directive 2014/24/EU on public procurement:

34 [...]regarding services provided by lawyers, covered by article 10(d)(i) and (ii) of Directive 2014/24, it is clear from recital 25 of that directive that the EU legislature took into account the fact that such legal services are usually provided by bodies or individuals designated or selected in a manner which cannot be governed by procurement rules in certain Member States, so that it was appropriate to exclude those legal services from the scope of that directive.

35 In that regard, it must be observed that Article 10(d)(i) and (ii) of Directive 2014/24 does not exclude all services provided by a lawyer for the benefit of a contracting authority, but only the legal representation of their client in proceedings before an international arbitration or conciliation instance, before courts or public authorities of a Member State or a third country, or in judicial proceedings before international courts or institutions, and also legal advice given in preparation for, or in view of the probability of, such proceedings. Such services provided by a lawyer are to be conceived only in the context of a relationship "intuitu personae" between the lawyer and his or her client, characterised by the utmost confidentiality.

36 First, such a relationship "intuitu personae" between a lawyer and his or her client, which is characterised by the free choice of representative and the relationship of trust that unites the client with their lawyer, renders it difficult to provide an objective description of the quality expected of the services to be provided.

38 it follows that, having regard to their objective characteristics, the services covered by Article 10 (d)(i) and (ii) of Directive 2014/24 are not comparable with other services included within the scope of application of that directive. Having regard to that objective difference, the EU legislature was also able, in the exercise of its discretion, to exclude those services from the scope of that directive without infringing the principle of equal treatment.

In Italy such a decision, stating that legal services are excluded from the application of the public procurement law. has been acclaimed as a confirmation of the prevalence of intuitu personae between lawyer and customer (see Article 17 of Legislative Decree 18 April 2016, No 50 - the national Code of public contracts, henceforward indicated also as Code). Traditionally, in Italy legal services are considered a peculiar case, a closed market where lurk clientelistic relationships that sometimes lend themselves to malpractice and malfeasance (also considering the great number of lawyers in Italy). ANAC (National Anti-Corruption Authority) has decided to issue 'guide-lines' merely for the interpretation of the primary regulation based on the Article 213, paragraph 2, of Legislative Decree No 50/2016.

Since the beginning of the war, the Ministry of Justice, the Ministry of Foreign Affairs, the Ministry of Finance have represented the interests of Ukraine in foreign jurisdictional bodies, in particular, in the implementation of the Procedure for the Protection of the Rights and Interests of Ukraine during the settlement of disputes, consideration of cases involving a foreign entity and Ukraine in foreign jurisdictional bodies and statements related to compensation for damage caused as a result of the international armed conflict on the territory of Ukraine, approved by the Decree of the President of Ukraine dated 25.06.2002 № 581/2002, and the Procedure for

ensuring the representation of Ukraine during the consideration of cases at the European Court of Human Rights, approved by the Resolution of the Cabinet of Ministers of Ukraine dated 04/29/2004 № 553. Yet, in order for such representation to be transparent, the rules of public procurement must be applied to it.

2. Literature Review

In addition to practicing consultants, scientists from various fields of law actively conducted scientific research in the field of public procurement. The result of the scientific research was the dissertation research of O.L. Yuditskii “Legal regulation of procurement of goods, works, and services with state funds”, Ya.V. Petrunenko “Economic and legal basis of public procurement in Ukraine”, A.O. Olefir “Economic and legal support of public procurement in the field of health care”, M.S. Pysmenna “Methodology and organization of analysis and control of purchases for public funds”, and A.O. Soshnikov “Theoretical principles of public procurement”, in which the solution to the problems of public procurement was initiated. Yet, the tasks to be solved in them are outside the boundaries of civil law, namely, at the intersection of economic science with public administration, and economic and administrative branches of law. The aforementioned information is conditioned by an attempt to solve the practical problems of the purchase contract through the prism of civil law analysis.

The purpose of the article is a critical analysis of the contract for the purchase of legal consulting and legal representation services using civil law tools and the development of criteria for identifying alogisms that directly contradict the norms of civil legislation on the consulting contract in the norms on public procurement. The objective of the article is to summarize the main conceptual contradictions between the contract for the purchase of legal consulting and legal representation services and the civil law consulting contract.

The scientific novelty of the research is derivative in nature, as it is the further development of the ideas of the authors, who, based on a comprehensive study, but from the standpoint of civil science, analyze the issues of civil law implementation of public procurement and develop new scientific provisions and proposals for improving legislation in the field of public procurement.

3. Methods and materials

A practical study of current issues related to the rights of internally displaced persons was conducted by interviewing 211 scientists investigating problems related to internally displaced persons' rights, 237 employees of local self-government bodies and 194 specialists of the migration service departments of Vinnytsia, Cherkasy, Poltava, Odesa and Kyiv regions of Ukraine. The research was conducted using the MySurveylab service.

4. Results

The largest procurement amount in Ukraine by subject (DK 021:2015: 79110000-8 – Legal consulting and legal representation services) worth UAH 380,634,459,831.00 was announced on July 14, 2022, by the Regional Center for Providing Free Secondary Legal Aid in Cherkasy region procurement without the usage of an electronic system for “legal consulting and legal representation services” (on the basis of the mandate for the provision of BVPD dated 04.14.2022 № 023-230000195 contract № 49/25 at the stage of LL proceedings). But on July 15, 2022, the bidding was canceled on the basis of “the absence of further need for the purchase of goods, works, and services”, and this is the traditional reason for canceling the purchase in case of errors by the Customer when uploading information to the “Prozorro” system, and since there is no mechanism for correcting mistakes, then the togas were canceled.

The next largest sum in the amount of UAH 222,280,230.80 was announced on June 14, 2018, by the Ministry of Justice of Ukraine for the negotiation procedure for the purchase of “Legal consulting and legal representation services”, code DK 021:2015:79110000-8 (Case of the claim of «Littop Enterprises Limited», «Bridgemont Ventures Limited» i «Bordo Management Limited» companies to the State of Ukraine), as a result of which, on July 19, 2018, an agreement was concluded with the international law firm “Latham & Watkins (London) LLP” #6952067cas for the total amount of 8,027,807.00 USD.

A total of 287 tenders were announced in Ukraine for the purchase of legal services in the amount of more than UAH 1,000,000.00 at the time of the creation of the material. After the start of the military aggression, the most expensive procedure in Ukraine, with the amount of UAH 2,000,000.00, was the opening of tenders with special features, conducted by KP KMR “DOBROBUT” on the subject of “Legal consulting and legal representation services” (providing legal consulting services, legal representation, etc.) based on CPV according to DK 021:2015 79110000-8», as a result of which, a contract was concluded with LLC “Legal

perspective D” #44743011 for the total amount of UAH 1,877,632.84 with VAT on March 2, 2023.

In total, more than 10,000 tenders for the procurement item “79110000-8 - Legal consulting and legal representation services” are placed in the “Prozorro” system, with 349 tenders canceled and 91 tenders not held.

At the same time, the Law of Ukraine “On Public Procurement” contains individual exceptions, such as legal services, the purchase of which is carried out by the National Bank of Ukraine for the representation of its interests in the authorities of foreign countries, as well as legal services related to the protection of its rights and interests during the settlement of disputes, consideration of cases in foreign jurisdictions, in which the National Bank of Ukraine is a participant. The purchase of such services is carried out by the National Bank of Ukraine in accordance with the procedure determined by it. Based on the results of such procurement, the National Bank of Ukraine shall publish in the electronic procurement system a report on the procurement contract concluded without using the electronic procurement system.

Yet, the National Agency for the Prevention of Corruption (NAPC) conducted an anti-corruption examination of the draft law that allows the National Bank of Ukraine (NBU) to purchase legal services for representation in foreign courts, bypassing the Law of Ukraine “On Public Procurement” and the Prozorro system. It will limit the transparency of the procedures and will not allow the public to monitor the spending of budget funds. The NBU is currently buying legal services for representation abroad at open tenders. The authors of the bill complain that the procedure is long and too onerous. NASK recommends making changes to the Law and allowing the usage of the negotiation procedure for the purchase of legal services for representing the interests of the National Bank of Ukraine in courts abroad. This procedure is successfully used by the Ministry of Justice and the Ministry of Foreign Affairs when purchasing legal services for international courts and arbitrages.

The NBU will not be obliged to publish any information about such purchases in Prozorro. The public will not be able to monitor which legal companies the NBU engages in and how much money it spends on it. It is possible to get acquainted with the results of the anti-corruption examination via the following link: <https://bit.ly/3inQoy7>.

The cases of avoiding the public procurement procedure are not isolated. The costs of external legal advisers from the United States of America, who are engaged by the Cabinet of Ministers of Ukraine through the Ministry of Foreign Affairs, significantly exceed the salary fund of the staff lawyers of the body in question. This is evidenced by the information contained in

the letter of the Ministry of Foreign Affairs dated 04.04.2023 №72/13-091-38012 sent in response to the request of the lawyer Volodymyr Bogatyr regarding the legal advisers engaged by the Government of Ukraine in 2019-2023 by the Ministry of Foreign Affairs in the period from 2019-2022, contracts were concluded on the purchase of legal services with the United States law firm “Covington & Burling LLP”. According to these agreements, the law firm undertakes to provide the Ministry of Foreign Affairs with legal services for the protection of the rights and interests of Ukraine during the resolution of international disputes involving Ukraine and other subjects of international law. So, over the last four full years, 20 million 665 thousand US dollars were allocated to external consultants of the Ministry of Foreign Affairs. It is an average of 5.17 million per year or about 14.1 thousand per day.

The given statistics and the unequal approach of the legislator to procurement subjects indicate gaps in the legislation and a high percentage of procurements in which the Customer was unable to achieve a positive procurement result, which indicates the topicality of the chosen direction of research.

We adhere to the legal position of Olga Marchenko, according to which, legal consulting is a professional activity of specialists from various fields of law, the purpose of which is to provide qualified assistance to individuals and legal entities in solving various legal problems in the form of a consultation; a method of solving professional tasks, a step-by-step procedure used in legal practice by specialists of various fields to guide individuals and legal entities through legal advice, providing the necessary legal information and choosing the optimal solution to the problem. Legal consulting is one of the directions of legal practical activity as a system of deliberate and voluntary specific actions and operations for the protection and protection of the rights, freedoms, and legitimate interests of a person, which are carried out by lawyers on a professional basis within the limits of the law and have legal consequences (Marchenko O. S., 2019).

In accordance with Clause 5 of Art. 1 of the Law of Ukraine “On Public Procurement” (hereinafter referred to as the Law), a procurement contract is a contract concluded between a customer and a participant as a result of the procurement procedure and provides for the provision of services, performance of works, or acquisition of property rights to goods. Also, Clause 1 of Art. 36 of the Law stipulates that the purchase contract is concluded in accordance with the norms of the Civil Code of Ukraine (hereinafter referred to as the CC of Ukraine) and the Economic Code of Ukraine, taking into account the specifics defined by the Law.

The legal concept of the contract, which is contained in Clause 1 of Art. 626 of the Civil Code of Ukraine, defines a contract as an agreement between two or more parties aimed at

establishing, changing, or terminating civil rights and obligations. The Commercial Code of Ukraine does not contain a definition of a contract, therefore, by mechanically combining two definitions, we get a third one, in which a purchase contract is an agreement between two or more parties aimed at establishing, changing, or terminating civil rights and obligations concluded between the customer and the participant based on the results of the procurement procedure and provides for the provision of services, performance of works, or acquisition of property rights to goods. The imperfection of this approach of the legislator is obvious and consists in the following:

The concept of an agreement between the parties (as a basis for the emergence of contractual obligations), on which all private law is based, is replaced by the results of the procurement procedure (a report on the results of the procurement by its automatic generation in the electronic procurement system), i.e. the procurement contract is not concluded on the basis agreements, and on the basis of a report in the electronic procurement system;

The agreement of two or more parties in the above concept is limited to the defined and named status of the customer and participant, that is, the parties cease to be legally equal. Customers are state authorities, local self-government bodies, and social insurance bodies created in accordance with the law, as well as legal entities (enterprises, institutions, and organizations) and their associations, which provide for the needs of the state or territorial community, if such activities are not carried out on an industrial or commercial basis, in the presence of one of such features. The participant of the procurement procedure (hereinafter the participant) is an individual, including an individual entrepreneur, or a legal entity (resident or non-resident), who submitted a tender offer or took part in negotiations in the case of applying the negotiated procurement procedure. It is clear that mostly the statuses of the customer and the participant are relevant at the stage “before the Winner is determined”. And although Art. 627 of the CC of Ukraine provides that the parties are free to conclude a contract, choose a counterparty, and determine the terms of the contract..., yet their obvious inequality is clearly traced in Art. 17 of the Law, giving the Customer the right to cancel the purchase at their own discretion in case of: 1) absence of further need for the purchase of goods, works, and services; 2) the impossibility of eliminating violations that occurred due to detected violations of the legislation on public procurement; 3) reduction of expenses for procurement of goods, works, and services. Thus, in violation of the civil law principle of equality of the parties, the Customers will always be in an advantageous position before the Participants of the public procurement.

The Law, for unknown reasons, limits the establishment, change, or termination of civil rights and obligations only to the provision of services, performance of works, or acquisition of property rights to goods. In its turn, the CC of Ukraine in Chapter III “Separate types of obligations” contains 26 chapters, in which certain types of contractual obligations are established (from purchase and sale to joint activities). Even such a widespread civil law contract as a lease one cannot be attributed to the provision of services, performance of works or acquisition of property rights to goods.

A contract for the provision of legal assistance may be concluded in favor of the client by another person acting in their interests. The specifics of the conclusion and content of contracts (agreements) with lawyers who provide free legal assistance are established by the law regulating the procedure for providing free legal assistance (Part 4 of Article 27 of the Law of Ukraine “On Advocacy and Advocacy Activities”).

The content of the contract on the provision of legal assistance cannot contradict the Constitution of Ukraine and the laws of Ukraine, the interests of the state and society, its moral principles, the oath of a lawyer of Ukraine, and the Rules of lawyer ethics, approved by the report-election congress of lawyers of Ukraine on June 9, 2017 (with changes approved by the visit of the lawyers of Ukraine dated February 15, 2019).

However, if the subject of procurement by subject (DK 021:2015: 79110000-8 – legal consulting and legal representation services) is considered through the prism of the current regulatory framework in the form of the Law of Ukraine “On Amendments to the Law of Ukraine “On Public Procurement” and some other legislative acts of Ukraine on the improvement of public procurement” № 114-IX and adopted by the Cabinet of Ministers of Ukraine on February 28, 2022, by the Resolution № 169 “Some issues of defense and public procurement of goods, works, and services under martial law”, as amended (hereinafter Resolution №169), according to which, in the conditions of martial law, defense and public procurement of goods, works, and services are carried out without applying the procurement and simplified procurement procedures specified by the Law and the Law of Ukraine “On Defense Procurement”. Thus, in the conditions of martial law, other conditions were introduced, namely, state customers in the field of defense and services of the state customer procure legal services for defense purposes without applying the types (procedures) of procurement defined by the Law of Ukraine “On Defense Procurement”. Such purchases are not included in the annual procurement plan.

The next innovation was the division of procurement into defense and other procurements on November 11, 2022, by the CMU Resolution №1275 “On approval of the specifics of defense procurement during the period of the legal regime of martial law”, which established a special procedure and conditions for defense procurement for state customers in the field of defense, services of the state customer, as well as military units, organizations (institutions, establishments) authorized by the decision of the state customer in the field of defense to carry out purchases and conclude state contracts (agreements), ensuring the protection of state customers from military threats during the period of the legal regime of martial law.

5. Discussion

In contrast to Resolution №169, Resolution №1178 “On approval of the specifics of public procurement of goods, works, and services for customers, provided for by the Law of Ukraine “On Public Procurement”, for the period of the legal regime of martial law in Ukraine and within 90 days from the day of its termination or cancellation” was accepted. Without canceling the Law of Ukraine “On Public Procurement”, it significantly increased the number of procedures, providing that Customers, including centralized purchasing organizations, purchase services (except services for ongoing repairs), the value of which is or exceeds UAH 100,000.00 by using open auctions in the order determined by these features, and/or by using the electronic catalog for the purchase of goods in accordance with the procedure established by the Resolution of the Cabinet of Ministers of Ukraine dated September 14, 2022, № 822 “On approval of the Procedure for the formation and usage of the electronic catalog”, with taking into account the provisions determined by the features. It should be noted right away that the subject “79110000-8 - Legal consulting and legal representation services” is completely absent from Prozorro Market.

6. Conclusion

The start of full-scale military operations on the territory of Ukraine affected the planned stages of implementation of the Association Agreement and compliance with the current legislation of Ukraine. At the same time, it will allow for speeding up the European integration processes.

At the time of martial law, it would be possible to extend the concept of a civil law contract and the rules of conclusion to contracts under the subject “79110000-8 - Legal consulting and legal representation services”, as for the National Bank of Ukraine.

The procedure for concluding a contract for the purchase of legal consulting and legal representation services is too complicated in the absence of electricity and the Internet.

The form of the contract for the purchase of legal consulting and legal representation services could correspond to the form of concluding a civil law contract of advocate associations.

Nowadays, it can also be noted that the legislation of Ukraine in the field of public procurement was able to adapt to military challenges, but at the moment, the transformation of public procurement of legal services is necessary. As of today, we can already talk about the advantages of the international legal sphere of public procurement of legal services and the need to implement EU regulatory acts into the national legislation of Ukraine.

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