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**A DEAD-END BRANCH OF APPEAL: HOW THE SUPERVISORY  
AUTHORITY IGNORES THE SIGNALS OF AN EXTERNAL REPORTER**

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## **Objective of the Study**

The study sets out to establish what becomes of the applications that participants in procurement procedures make to the second administrative instance of supervision: whether they reach consideration on the merits, in what forms they end, and how far the observed outcome follows from the legal structure of appeal itself.

For the purposes of the study, the second instance means the central office of FAS Russia in relation to the decisions of the commissions of its territorial offices. Consideration on the merits means the assessment of the applicant's arguments about a procurement procedure, ending in a decision that the complaint is well founded or unfounded. A signal ending without processing means an outcome in which the proceedings on an application are closed while the substance of the arguments is never assessed.

The tasks of the study:

1. To examine the legal structure of administrative appeal under the two legal regimes and to establish whether either of them provides for the review of decisions on complaints by a higher antimonopoly authority.
2. To trace, across 28 applications filed by different applicants over five months of observation, the outcome of an application to the second instance, and to set it against the result of the first instance for the same source of signal.
3. To describe the forms in which a signal ends without being processed, and to relate the observed configuration to the requirements of chapter VIII of the UNCITRAL Model Law and article 9 of the United Nations Convention against Corruption.

## **Intended Readership**

The study is addressed first of all to the bodies responsible for the integrity of procurement systems and to those who design methodologies for assessing them. The indicator proposed here, the share of applications considered on the merits at the review stage, does not replace the test of whether an appeal instance exists; it adds a test of whether that instance can be passed.

To researchers of public procurement and corruption risk who work with administrative data, the study offers a distinction between a failure to consider on the merits and a rejection on the merits: merging these outcomes into a single category makes the review stage unobservable even with full access to the decisions.

To civil society organisations that support procurement monitoring, and to international organisations assessing the conformity of national systems with the UNCITRAL standard and the United Nations Convention against Corruption, sections 2 and 7 can be used on their own: as an analysis of the legal structure of the second instance and as its comparison with international requirements.

## **Executive Summary**

The right to appeal a decision of a supervisory authority to a higher instance belongs to the standard set of guarantees of a procurement system and is counted by international assessment methodologies as a mark of its maturity. The present study traces the fate of 28 applications filed by different applicants to the central office of the Federal Antimonopoly Service of Russia following the consideration of complaints about procurement procedures under laws 44-FZ and 223-FZ between March and August 2026. The central office acts as the second supervisory instance in relation to the decisions of the territorial offices.

**Data.** The CILC register: 427 procedures under laws 44-FZ and 223-FZ in 68 regions, with a combined initial price of RUB 980.5 million (about USD 11.8 million) and bid submission deadlines falling between 30 March and 19 August 2026; in 369 procedures a decision was taken on the merits. From this body of data, 28 applications to the second instance were isolated; in addition, a documented case brought by an independent applicant was examined, which gives a complete cycle of a signal passing through both instances. The anonymised dataset is published under a CC BY 4.0 licence.

**Principal findings.** Not one of the 28 applications was considered on the merits: 24 were returned without consideration, and 4 received replies in the form of letters whose subject was the territorial office's compliance with internal procedural deadlines rather than the substance of the procurement dispute. The result is zero irrespective of the applicant, the region, the legal regime, the procurement method and the price of the procedure. At the first instance the same material yields 24.9 per cent of confirmed violations, and between territorial offices the share of confirmations ranges from 0 to 55 per cent.

**The legal structure.** The outcome is consistent with the structure of administrative appeal as the second instance itself sets it out, including an express statement that it holds no power of review over complaints considered under article 18.1 of the law on the protection of competition. For the regime of law 44-FZ no such conclusion follows from the provisions cited, and the zero result is established here empirically.

**Conclusions.** Four documented forms in which a signal ends without being processed are identified, including the limiting case: a finding that the actions of a territorial office were unlawful which carries no legal consequences. A working hypothesis is formulated about the functional equivalence of such an instance to the absence of an instance within the meaning of chapter VIII of the UNCITRAL Model Law and article 9 of the United Nations Convention against Corruption.

## 1. Introduction

A system of appeal in public procurement is usually described as a ladder: a participant who disagrees with the actions of a contracting authority applies to a supervisory authority; one who disagrees with the decision of that authority applies to a higher instance or to a court. The presence of each rung is recorded in assessments of the quality of procurement systems as a guarantee in its own right. Yet those methodologies almost always test whether the rung exists and almost never test whether anyone climbs it.

The present study concerns the second rung of that ladder in the Russian procurement system: applications to the central office of the Federal Antimonopoly Service (hereafter FAS Russia) concerning the decisions of its territorial offices. The question is narrow: what happens to applications that reach the second supervisory instance. Of 28 applications filed by different applicants over a five-month period of observation, not one was considered on the merits.

A zero at this number of observations needs no statistical apparatus. What it needs is an analysis of the legal structure that makes such an outcome reproducible, and a record of the forms in which it is expressed. The study continues the line of CILC publications on the observability of corruption mechanisms from open data (a typology of mechanisms, [zenodo.2193939](https://zenodo.org/record/2193939)) and on the cost assessment of confirmed violations ([zenodo.22237028](https://zenodo.org/record/22237028)), where the zero result of the second instance was recorded but not analysed.

## **2. The Legal Structure of Administrative Appeal**

Administrative appeal in procurement is divided between two legal regimes. For the procurement of certain types of legal entities, part 10 of article 3 of law 223-FZ gives a participant the right to appeal the actions of a contracting authority to the antimonopoly authority under the procedure of article 18.1 of law 135-FZ on the protection of competition. For the contract system, complaints are considered by the supervisory authority under the procedure established by law 44-FZ. In both regimes the decision on a complaint is taken by the commission of a territorial office of FAS Russia.

From that point the two routes diverge. The judicial channel is provided for expressly: a decision taken under article 18.1 may be appealed in court within three months of the day it was taken (part 23 of article 18.1 of law 135-FZ), which accords with the general rule of article 11 of the Civil Code, under which a decision taken by administrative procedure may be contested in court, and with article 449 of the Civil Code, which allows a tender to be declared invalid by a court on the suit of an interested person. No administrative channel of review is provided for decisions on complaints: the mechanism by which collegial bodies of FAS Russia review the decisions of territorial offices, established by part 4 of article 23 of law 135-FZ, covers cases of breach of antimonopoly legislation and does not extend to decisions taken under article 18.1. This structure is set out in the observed materials by the central office of FAS Russia itself: article 18.1 makes no provision for the review or setting aside of a decision taken by the commission of a territorial office.

For complaints considered under article 18.1, a participant's application to the second administrative instance is thereby directed into a channel that holds no power to change the result: this follows from the legal structure and is stated expressly by the instance itself. For the regime of law 44-FZ no such conclusion follows from the provisions cited, and the zero result is established here only empirically, from the outcomes of applications (section 4). In neither regime is the application prohibited: it is accepted, registered and answered. What the study takes as its subject is the gap between a preserved right to apply and the result that this right does not produce.

## **3. Data and Method**

The empirical basis is the CILC register: 427 procurement procedures under laws 44-FZ and 223-FZ in 68 regions, with bid submission deadlines falling between 30 March and 19 August 2026 and a combined initial price of RUB 980.5 million (about USD 11.8 million). The procedures were selected by an external reporter on signs of restricted competition and carried through to a decision of FAS Russia; in 369 of them a decision was taken on the merits, in every case before the contract was concluded. The anonymised dataset is published under a CC BY 4.0 licence (zenodo.22236602) together with the anonymisation and packaging scripts, which makes it possible to reproduce every table of the study without recourse to the primary register.

From this body of data a subsample was isolated: 28 applications filed with the central office of FAS Russia by different applicants following decisions of territorial offices. For each application the result of the first instance, the legal regime, the region, the procurement method, the price of the procedure and the content of the second instance's reply were recorded. In addition, a documented case brought by an independent applicant outside the register's observation period was examined (the complaint was filed in October 2025), which gives a complete cycle of a signal passing through both instances with an act at every step. The

materials of the case were provided by the applicant; the procedural acts are published in the database of decisions and legal acts of FAS Russia.

The method is to set what enters the channel (heterogeneous applicants, procedures, legal regimes and arguments) against what comes out of it, and to characterise in legal terms the forms in which the outcome is expressed.

## **4. Results**

Of the 28 applications to the second instance, not one was considered on the merits of the procurement dispute.

The outcomes fall into two groups. Twenty-four applications ended in a return without consideration; in one of these the applicant appealed the return itself, and the central office confirmed by letter that it had been lawful. Four applications received replies in the form of letters from deputy heads of FAS Russia. It matters that these are letters and not decisions: they have no operative part, they do not create, alter or extinguish rights, and they are not themselves open to appeal. The subject of all four letters was not the substance of the procurement dispute but the territorial office's compliance with internal procedural requirements. In three cases a breach was confirmed: the territorial office had sent the applicant a copy of its own decision one working day late (part 22 of article 18.1 of law 135-FZ), and a letter was sent to that office on the need for strict compliance with the law. In the fourth letter the central office, finding no procedural breach, stated expressly that it held no power to review the decision of the commission of a territorial office.

The only breaches established by the second instance over the whole period of observation turned out to be one-day delays by territorial offices in sending out their own decisions, and the only measure taken in response was correspondence.

The comparison is with the first instance, working on the same register over the same months. It considers 369 of the 427 procedures on the merits and confirms a violation in 92 cases, 24.9 per cent of those considered. Confirmation is moreover uneven: between territorial offices the share of confirmed violations from a single source of signal ranges from 0 to 55 per cent. The second instance is uniform: zero considerations on the merits in both legal regimes, in every federal district from which applications came, against the decisions of seventeen different territorial offices, in every procurement method and in every price band, from procedures worth hundreds of thousands of roubles to one of RUB 28.6 million. The spread at the first rung shows that consideration on the merits produces a variable outcome; the uniformity at the second is consistent with consideration not taking place.

The structure of the applications is itself asymmetric: what is appealed is almost exclusively a failure of the first instance to consider a complaint (23 of 58 such decisions, 39.7 per cent), whereas a rejection on the merits is appealed in isolated cases (5 of 277, 1.8 per cent) and decisions in the applicant's favour are not appealed at all. Applicants behave rationally: a return without consideration looks like a curable procedural defect, and they attempt to cure it by applying higher up. The second instance answers with the same outcome: a complaint about a failure to consider is not considered.

## **5. Forms in Which a Signal Ends Without Being Processed**

The complete cycle of a signal is documented on the materials of a second applicant, unconnected with the first and acting outside the register's observation period. His complaint against the rejection of bids in two

procedures was returned by the territorial office without consideration on the merits, on the ground that setting out arguments about two procurements in a single complaint is not provided for. The central office replied that the law on the protection of competition contains no prohibition or restriction on including information about several tenders in a single complaint, and that the actions of the territorial office were therefore not in accordance with procurement legislation. The measure taken in response was a letter to the territorial office on the need to take that position into account. The decision to return was not set aside, the returned complaint was not considered, and by that time the procurement procedures had been completed. The case records the limiting property of the structure: even the second instance's agreement with the applicant's legal position produces no consequences, because a finding of unlawfulness is not joined to a power of review. A failure to consider, held to be unlawful, remains in force. The ground of return applied by the first instance was characterised by the second as not existing in law.

Taken together, the observed materials yield four forms in which a signal ends without being processed, each recorded in the system's own acts: the return of an application without consideration; the substitution of the subject matter, where instead of the substance of the procurement dispute what is assessed is the territorial office's compliance with internal procedural deadlines; an express statement by the second instance that it holds no power of review; and agreement with the applicant's legal position entailing neither the setting aside of a decision, nor a review, nor the restoration of the procedure. The forms differ in how they are drawn up and coincide in outcome: the content of the signal is not processed, and the proceedings end.

## **6. Interpretation: A Terminal Instance**

In the configuration observed, the second administrative instance works as a terminal rather than as a body of review: it closes an external signal without processing its content. The interpretation requires no assumption of bad faith on the part of particular officials: every participant in the chain may apply the rules in force in good faith, and the observed outcome does not change, since for complaints under article 18.1 it is explained by the structure of the rules themselves, without recourse to the conduct of individuals. The phenomenon observed therefore belongs to institutional analysis rather than to law enforcement assessment: none of the outcomes described constitutes a breach on the part of the second instance, because the power whose non-exercise might be imputed to it does not exist.

The presence of a second instance is counted in assessments of the maturity of procurement systems as a guarantee of legal protection, and in that capacity it proves to be a false indicator. Whether a rung exists and whether anyone can get past it are different things, and open data show only the first. Here the mechanism leaves its trace in the absence of decisions on the merits rather than in any anomalous decision, and only a continuous record of what becomes of applications brings it into view.

Such a configuration may lead participants to leave the channel. If participants know that the second instance does not reach the merits, applying to it loses its point and the flow of applications contracts; a small number of applications in official statistics then begins to look like a sign of satisfaction with the decisions of the first instance, although it may reflect the opposite. On the register available this supposition cannot be tested: over five months of observation the dynamics of the flow cannot be separated from censoring (section 8).

The judicial channel of protection remains open: decisions of territorial offices may be contested in the commercial courts under chapter 24 of the Commercial Procedure Code, and tenders may be declared

invalid under article 449 of the Civil Code. Replacing administrative review with judicial review is not, however, neutral for a participant: it moves the dispute into a substantially more expensive and slower circuit, while the disputes at issue concern procedures with a mean price of about RUB 2.3 million, for which the costs of judicial challenge are comparable with the price of the contract itself. The second administrative rung, economically more accessible to a typical participant in the segment observed, provides no review in the materials observed.

## **7. Comparison with International Standards**

Chapter VIII of the UNCITRAL Model Law on Public Procurement builds successive review of decisions as a substantive procedure: the review body assesses the arguments and has the power to change the result. Article 9 of the United Nations Convention against Corruption requires an effective system of appeal that provides legal means of contestation. Formally the configuration observed has a second instance; substantively it has no review. For procedures under law 223-FZ the absence of review is not an empirical deviation but a legal structure set out by the instance itself, while for procedures under law 44-FZ, where applications were likewise sent to the central office, all twenty applications of the period observed were returned without consideration.

A working hypothesis follows, which the material available does not establish as proved: an administrative instance of review that systematically fails to reach the merits of applications and holds no power to change the result is functionally equivalent to the absence of an instance, even though the formal requirement that one exist has been met. If the hypothesis holds, methodologies for assessing the conformity of procurement systems with international standards need an addition: the test should fall on the share of applications considered on the merits and on whether the review body holds the power to change a decision, rather than on the existence of an appeal mechanism.

## **8. Limitations**

The sample is not random: the procedures were selected by an external reporter on signs of restricted competition, so the characteristics of the register do not carry over to the procurement system as a whole. This limitation bears only weakly on the conclusion about the second instance, since a failure to consider does not depend on how a procedure came into observation; transferring the zero result to the whole flow of applications does, however, require a comparable control subsample.

The size of the subsample, 28 applications, is sufficient for a conclusion about the reproducibility of the outcome but not for frequency estimates within it. The observation covers one market segment (professional services) and five months of 2026; the flow of applications is moreover subject to right-censoring, since applications concerning procedures at the end of the period may not have been completed by the snapshot date, so a fall in the number of applications towards the end of the period should not be read as the flow dying away.

The judicial channel of challenge is not included in the study, and the conclusion about terminality relates solely to the administrative ladder. The data record the outcome and the legal structure but not the genesis of that structure: whether the absence of a power of review is a deliberate legislative choice or a side effect of fragmentary regulation calls for a separate historical and legal analysis.

## **9. Recommendations**

Publish the statistics of the second instance with the outcomes separated: considered on the merits and upheld, considered on the merits and rejected, closed without consideration on the merits with the ground stated, closed by a reply carrying no legal consequences. The category “not upheld”, without that separation, conceals the difference between a working and a non-working review.

Include the share of applications considered on the merits, and the presence of a power to change a decision, among the data disclosed by a procurement system and in methodologies of international assessment: these indicators measure the accessibility of a remedy; the existence of an instance does not.

Join a finding of unlawfulness to a consequence: if a higher authority establishes that the return of a complaint did not accord with the law, that finding should entail the setting aside of the return and the consideration of the complaint, rather than a letter addressed to the lower authority. Recognising a breach without restoring the right that was breached reproduces the failure to consider in a form that cannot be appealed.

Code a failure to consider on the merits at the review stage as an outcome in its own right, distinct from a rejection on the merits. For the CILC register of mechanisms this is a separate trace of a mechanism at work; merging the two outcomes into a single category of “not upheld” makes the mechanism unobservable even for a researcher working with complete data on decisions.

## **Sources**

Civil Code of the Russian Federation, articles 11 and 449.

Federal Law No. 135-FZ of 26 July 2006 on the protection of competition, articles 18.1 and 23.

Federal Law No. 223-FZ of 18 July 2011 on the procurement of goods, works and services by certain types of legal entities, part 10 of article 3.

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