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# Access to justice in public procurement: improving judicial review through lean thinking, proactive law and legal design

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**Abstract:** The ultimate goal of the public procurement remedies system is to effectively enforce procurement rules and ensure that tenderers can appeal against contract awards and other decisions as efficiently and quickly as possible. In Finland, multiple measures have been taken to make the public procurement appeal system more effective, but studies show that reforms have made it more difficult and less attractive to appeal. The current system does not adequately provide access to justice to economic operators and the conventional approach to reforms has not done the job. To radically improve the public procurement remedies system, we discuss the integration of lean thinking, proactive law and legal design to improve access to justice in the public procurement appeal

system. Lean thinking, traditionally used in manufacturing, focuses on efficient value creation and continuous improvement, helping streamline processes and improve the quality of justice. Proactive law aims to create legal frameworks that prevent problems before they arise, promote positive outcomes and create opportunities and value. Legal design combines legal thinking with design thinking to make legal systems, including processes, policies and documents, more user-friendly, understandable, transparent and accessible. We identified the following dimensions that integrate these three approaches: proactivity, continuous improvement, user-centricity, multi-professional collaboration, streamlining processes and design dimensions. As a result, we argue that the integration of lean thinking, proactive law and legal design offers promising avenues to improve the efficiency and efficacy of the existing public procurement appeal system. However, to move forward, additional data and empirical studies are needed to further evaluate the current situation, test the integration and assess their impact on existing challenges.

**Keywords:** *access to justice, fair trial, lean thinking, legal design, proactive law, public procurement*

## 1. Introduction

Access to justice is one of the most critical issues in law, although challenging to define briefly and unambiguously. The concept of access to justice is often conceived with a focus on dispute resolution or providing legal assistance to low-income individuals. Nevertheless, there is a consensus on access to justice as a constitutional right, and more broadly, the concept of access to justice concerns people's ability to obtain a just resolution of legal issues and enforce their rights in line with human rights standards (Letto-Vanamo, 2017, p. 233; OECD and Open Society Foundations, 2019, p. 24). The concept includes several dimensions: the substance of law, the availability and quality of justice institutions, the availability and quality of legal assistance, the quality of outcomes and legal capability (OECD and Open Society Foundations, 2019, p. 24).

Access to justice applies not only to individuals involved in civil, criminal or administrative procedures but also to businesses and economic operators

taking part in public procurement processes (Caranta, 2019). The ultimate goal of the public procurement remedies system is to ensure that decisions taken by the contracting authorities are reviewed effectively and as quickly as possible ('Council directive 2007/66/EC', 2007, Article 1)—that is, to guarantee access to justice. Depending on the country, review bodies are either administrative public procurement bodies or judicial appeal bodies (European Commission, 2017, p. 4). In Finland, the Finnish Market Court is the first-instance review body for public procurement appeals.

In Finland, as in the EU, efforts have been made to improve the efficiency of the public procurement remedies system in general (Salmela, 2015). The main problems with the remedies system in Finland have been the large number of procurement appeals and long processing times at the Market Court. Various legislative measures have been taken to improve the efficiency of the Market Court's handling of procurement appeals (Heikkinen and Halonen, 2023, pp. 171–172). However, the changes made have mainly been aimed at reducing the number of appeals rather than increasing the resources of the Market Court itself. Reducing the number of complaints is considered to help make the system more efficient, but from the tenderer's perspective, these legislative efficiency measures have, among other things, made appealing more difficult and less attractive (Halonen, 2021). Therefore, these legislative measures have not had the desired effect in terms of access to justice.

The current system does not adequately provide access to justice to tenderers, and the conventional approach to legislative reforms has not improved procedures in this respect. To facilitate access to justice, this article will discuss lean thinking (a management philosophy and bundle of practices), proactive law (an approach to legal issues aimed at preventing problems and promoting positive outcomes) and legal design (an application of human-centered design to the world of law) as approaches to making the judicial system more accessible, understandable and usable to improve access to justice in public procurement judicial review. These approaches have already been discussed in the context of the need to reform the law and the justice system and improve access to justice, but to our knowledge, separately and only to a limited extent in Finland (see, e.g., Einola-Pekkinen and Hirvonen, 2020; Fremer *et al.*, 2024; Haapio, Barton and Corrales Compagnucci, 2021; Hagan, 2018; 2019; Karpen and Senova, 2021; EESC, 2009; Sossin, 2017; Tolvanen, 2020). This article contributes to the streams of literature on lean thinking, proactive law and legal design by discussing them together, thus highlighting how they could, in combination, provide powerful tools for

redesigning law and justice. In addition, the public procurement remedies system provides a novel context for the application of these approaches.

The structure of the article is as follows. First, we discuss the deficiencies in the Finnish public procurement remedies system that have been identified in previous studies, the measures taken and insights to address them. Next, we present new perspectives on reforming the public procurement remedies system by integrating lean thinking, proactive law and legal design. We then consider the application of lean thinking to public procurement and legal procedures, followed by a detailed exploration of proactive law and legal design principles. Next, we examine how a proactive, lean and legal design approach can improve access to justice in the public procurement remedies system, focusing on key common elements, such as proactivity, continuous improvement, user-centricity, multi-professional collaboration, streamlining processes and design thinking. Finally, we present concluding remarks.

## 2. Deficiencies in the Finnish public procurement appeal system

Public procurement matters remain the largest group of cases that are filed at the Market Court; in 2023, 313 new cases (411 in 2022; 325 in 2021) arrived at the Court, while 430 were resolved (341 in 2022; 394 in 2021) (The Market Court, 2024). The average processing time for public procurement complaints was 7.6 months in 2023 (The Market Court, 2024). The processing time has varied between 6.6 and 8.4 months in previous years (2017–2020) (Halonen, 2021). The long processing times incur costs that are not only related to the procedures in court but also include interim arrangements that can be more expensive and of lower quality than procured long-term solutions, as well as the resources that the economic operator who gave the winning bid still have to invest while waiting for the court decision (Halonen, 2021). The possibility of making the appeal system more efficient has been examined multiple times, and reforms have resulted in increased court fees and the introduction of a leave-to-appeal system (Halonen, 2021).

From the economic operators' perspective, the legislative changes made in the past decade do not seem to have remarkably improved either the public procurement appeal system or the competition effectiveness of public procurement processes (Halonen, 2021), but have instead made appealing

procurement decisions less attractive. At the same time, studies have shown that there are also other factors that affect tenderers' decision on whether to litigate or not. Reputational concerns have been one of the main reasons tenderers refrain from litigation; tenderers fear that litigation will have a negative impact on their reputation and business relationships with contracting authorities and fellow economic operators (Arrowsmith and Craven, 2016; Heikkinen and Halonen, 2023; Pachnou, 2003). According to a survey done in Finland by Heikkinen, Halonen and Kurttila (2023), reputational risk was also the main reason for seven SMEs to withdraw their appeal. Reputational risk, therefore, affects not only the decision to appeal but also the decision to withdraw an appeal. It should be noted that while a total of 21 enterprises responded that reputational risk had "some impact" on their decision to withdraw their appeal, an even slightly higher number of tenderers responded that reputational risk had no impact on their decision (Heikkinen and Halonen, 2023).

In addition to reputational risks, another factor that influences a company's willingness to appeal is trust, or rather lack of trust. A survey conducted by Heikkinen and Halonen (2023), in collaboration with the Finnish Competition and Consumer Authority in Finland in 2023 showed that a large number of companies had only little or no trust in the judicial review and that an error made during the award stage would be corrected. The purpose of the survey was to map the level of companies' trust in the public procurement remedy system and to determine the reasons (including, among others, incomplete, inaccurate or misleading descriptions and technical specifications; discrimination in decision-making; incorrectly calculated scores; and errors in assessment criteria) that affect companies' decision to appeal or not to appeal a public procurement decision to the Finnish Market Court. The survey also showed that trust in the judicial system has declined over the last ten years, despite the continued interest in effective juridical review. A lack of trust also affects companies' interest in participating in the tendering process (Heikkinen and Halonen, no date).

Despite efforts to increase the efficiency of public procurement and improve access to justice, mainly through legislative changes, these changes have reduced effectiveness. Such changes entail a top-down evaluation (typical for court systems), building on historical practices on how to provide services, with the unfortunate consequence that effectiveness has been reduced, contrary to the objective of the reforms. To improve access to justice for tenderers, it may also be necessary to look beyond the procedures in court: proponents of proactive law have long argued for a broader view (Haapio,

Barton and Corrales Compagnucci, 2021, pp. 59–75). Their view is well aligned with Richard Susskind’s arguments on the concept of access to justice; he argues that the concept of justice should include four elements: (1) dispute resolution, (2) dispute containment, (3) dispute avoidance and (4) legal health promotion (Susskind, 2019, pp. 66–70).

The possibility of developing another alternative judicial review system, that is, rectification of the award decision system (see *Act on Public Procurement and Concessions Contracts (Finland) 2016*, Article 134), has also been explored in the legal literature. In rectification, the authority cancels the erroneous decision and reconsiders the case, in which case a new decision is issued. A report on improving the efficiency of public procurement procedures published in 2021 highlights the important role of the rectification system in correcting clear errors in the procurement process and recommends increasing the use of the rectification system (Halila, 2021). More recently, Heikkinen, Halonen and Kurttila (2023) assessed whether the effectiveness of a public procurement review system could be increased by improving the current procurement rectification system. They also assessed whether a dedicated public procurement complaints board (like those in Estonia or Denmark, that is, a procurement appeal body outside the court system) would enhance the efficiency of the Finnish review system as a whole. The effectiveness was analyzed through functional indicators (processing times), structural indicators (procedural rules, the appeal option and process costs) and reliability indicators (expertise, independence and impartiality). According to the study, the current procurement rectification system in Finland suffers from many problems, such as overlap with the Market Court’s appeal period, possible lack of legal expertise, handling of the rectification by a biased body and lack of further appeal rights and process and cost regulation. Therefore, a public procurement complaints board appears to be a promising option for increasing the effectiveness of the procurement judicial review system. (Heikkinen, Halonen and Kurttila, 2023)

### 3. New lenses for reforming the public procurement remedies system: lean thinking, proactive law and legal design

The court system plays a critical role in achieving access to justice by serving as a central institution where individuals can seek fair and impartial resolution of legal disputes (Letto-Vanamo, 2017, pp. 235–237). The studies described above illustrate that procurement processes and the related remedies system are not yet designed in a way to fully ensure access to justice for tenderers who want to challenge procurement units' procedures and decisions. Hagan (2018, p. 208) notes that the court system has traditionally developed through a top-down approach, focusing on following historical precedents (“we’ve always done it this way”) and prioritizing the needs of system professionals (“the legal system was made for judges, clerks and lawyers”). The reforms introduced into the Finnish public procurement remedies system seem to align with this conventional approach. In addition, legal design scholars claim that rules, procedures and materials are not user-friendly because they are often complex, intimidating and full of legal jargon, making it difficult for people to understand and navigate through the legal process (see, e.g., Hagan, 2018; Karpen and Senova, 2021; Sossin, 2017). To make legal processes both effective and efficient and truly providing access to justice, alternative approaches can be useful for examining the current system from a new angle, putting its strengths and weaknesses in a different light. Next, we will introduce *lean thinking*, *proactive law* and *legal design*, after which we will highlight the existing overlaps between these approaches and, finally, discuss their potential application in reforming the public procurement remedies system.

#### 3.1 Lean thinking in public procurement and legal procedures

While access to justice is a global and long-standing problem, court congestion or other issues related to, for example, trust in the judicial system, are not automatically resolved by increasing the expenditure on court systems (Azaria, Ronen and Shamir, 2023). Doing better and more with limited resources requires looking at the system with new eyes, and *lean thinking* could provide the lenses needed to “learn to see” (Rother and Shook, 2018).

Lean thinking has its roots in the way the Japanese car manufacturer Toyota built its manufacturing system, the Toyota Production System, after

the Second World War, which allowed it to outperform its competitors in the 1980s (Womack, Jones and Roos, 2008). The concept of *lean*—and the bundle of management ideas, practices and tools ascribed to it—is argued to be “an attempt to generalize and replicate lessons from Toyota in different company, industry and country contexts” (Åhlström *et al.*, 2021, p. 1868). It is a phenomenon that continues to attract managers, practitioners and academics in their quest to improve production processes and systems for both physical products and intangible services (Åhlström *et al.*, 2021). A key exercise within the lean philosophy is to continuously seek ways to add value to customers, then find ways to do so better, while continuously freeing up resources that can be used to add more value (Womack and Jones, 1996). The five fundamental lean principles are to (1) define value for the customer, (2) identify the value stream, (3) create flow by eliminating waste, (4) establish pull and (5) seek perfection (Netland and Powell, 2017).

Despite its origins in manufacturing, lean thinking has been applied in service sectors, including, extensively, healthcare (Costa and Godinho Filho, 2016; Lima *et al.*, 2021) and the public sector (Radnor, 2017). Importantly in this context, scholars have pondered on the implications of a lean approach in public procurement (Schiele and McCue, 2011), as well as in the judicial system (Hines, Martins and Beale, 2008; Martins, Storsjö and Zanoni, 2017). A few research projects have also focused on the actual implementation of lean practices in contracting and lawyers’ work (e.g., Haapio and Siedel, 2013; Michalakopoulou *et al.*, 2023) and in courts (e.g., Bumblauskas and Kalghatgi, 2018).

In Finland, lean thinking has, in recent years, come to be considered an approach to develop the judicial system and legal processes, though mainly in relation to criminal matters. The Ministry of Justice and the Ministry of the Interior have commissioned several investigations and work groups to evaluate how to make criminal procedures more efficient and how to speed up the handling of criminal matters, including applying lean thinking (Tolvanen, 2020). Recently, the Ministry of Justice work group on the Rule of Law Safeguards and Development of the Judiciary (*Oikeusvaltion takeet ja oikeuslaitoksen kehittäminen-työryhmä*, OM012:00/2023, VN/34680/2022) requested referrals on its preliminary proposals for action, amongst which lean thinking is mentioned as a means to ensure resources by identifying operations that can be automated and eliminating unnecessary tasks (Ministry of Justice Finland Workgroup, 2024). However, to the best of our knowledge, lean thinking has not been specifically considered in administrative matters.

## 3.2 Proactive law and legal design

*Proactive law* and *legal design* provide new approaches to the traditional approach to legal issues. The proactive law approach has two dimensions: a preventive and a promotive dimension. The preventive dimension has its origins in the work of an American professor of law and practitioner Louis Brown (see, e.g., 1950; 1986). The promotive dimension, on the other hand, was introduced in Finland in the late 1990s by Finnish scholars and practitioners in the context of contracts (for the history of the proactive law movement see, e.g., Berger-Walliser, 2012, pp. 14–16). Instead of being reactive and focusing on resolving problems and disputes after they have arisen, proactive law is forward-looking, aiming to identify potential problems, prevent them and minimize the impact of unavoidable risks. In addition, it uses the law as a tool to promote what is desirable and to create opportunities and value. Proactive law emphasizes multi-professional collaboration between legal professionals and other stakeholders in designing user-centered legal solutions. On the other hand, traditional law tends to involve a more isolated role for legal professionals. They as if own the legal issues and are mainly called in to deal with problems as they arise. (Berger-Walliser, 2012; Haapio, 2006; ‘Opinion of the European Economic and Social Committee 2009/C 175/05’, 2009; Pohjonen, 2006; Siedel and Haapio, 2010).

Legal design has roots in design thinking. Although the concept of design and design thinking has been around for decades, there is no unambiguous definition of design thinking, as it varies depending on the author’s academic background and the context in which the concept is used (Berger-Walliser, Barton and Haapio, 2017, pp. 355–360; Buchanan, 1992; Johansson-Sköldberg, Woodilla and Çetinkaya, 2013). As a concept, design thinking refers to two separate but related ideas: a unique way of looking at the world, and a process of activities and methods that reflect and support that worldview. It thus describes both what designers think when they work and what they do when they work (Clarke, 2020, pp. 2, 5). Legal design, in turn, is an umbrella term for an approach that applies the principles of design thinking and design-based methods to the field of law (Perry-Kessaris, 2019). According to the Legal Design Alliance (2018), an interdisciplinary network of academics and practitioners in law, design and other disciplines, “[l]egal design applies human-centered design to the world of law to enable desirable outcomes and prevent the causes of problems from arising and developing into conflict and disputes”. Margaret Hagan, one of the pioneers of legal design, defines legal design as “the application of human-centered design to

the world of law, to make legal systems and services more human-centered, usable, and satisfying” (Hagan, no date). This definition emphasizes that legal design has its roots in human-centered design, which is a key element of design thinking (Hagan, 2020). In addition, when viewed through the lens of systems theory, legal design is seen as

multiple practices and studies concerned with the creation of novel—or the redesign of existing—legal related sociotechnical systems (people, processes and technology) with a purpose driven by a public service bounded by agreed upon values such as access to justice, and the rule of law (Santuber and Krawietz, 2021, p. 93).

Legal design has the same mindset as the proactive law approach: the attitude of being preventive and proactive, human-centered and promoting multi-professional collaboration in the design of legal processes, systems, services, solutions, documents and information focusing on the needs, behaviors and experiences of the people who use them. The aim is to make them more accessible, effective, understandable and user-friendly for non-experts, laypersons such as clients and even legal professionals (Berger-Walliser, Barton and Haapio, 2017; Corrales Compagnucci *et al.*, 2021; Doherty *et al.*, 2021). By combining the proactive law approach and legal design, we can discuss the combination of problem-solving design and possibility-driven design. This means that the focus is not only on removing barriers and preventing or resolving problems and disputes but also on being proactive and forward-looking, with an emphasis on exploring and creating new and innovative solutions and opportunities (Salo-Lahti and Haapio, 2024, pp. 205–208). Thus, design has the potential to change, challenge and improve the status quo—that is, the “conventional” and “old school” ways of doing things (Baker, 2019). This covers making legal processes and documents user-centered, accessible, usable and understandable, as well as improving communication and knowledge sharing between stakeholders (Berger-Walliser, Barton and Haapio, 2017; Hagan, no date; Passera, 2017).

### 3.3 Proactive and lean legal design for enhancing access to justice in public procurement

The approaches described above stem from different traditions, but share multiple elements. In the following, we will describe these elements and how to apply them when thinking about reforms of the public procurement remedies system. Notably, several of these elements overlap and should eventually be considered together.

### 3.3.1 Proactivity and continuous improvement

Proactivity is a basic feature of proactive law, legal design and lean thinking, and establishes the mindset and approach for analyzing processes, policies and documents and problems before or after they occur (to avoid future disruptions and quality issues), and as part of continuous improvement efforts. For instance, proactive behaviors (e.g., problem solving) have been shown to have a positive relationship with performance improvement. In a lean context, employees should continuously challenge current practices and look for better ways of doing things. This requires a mindset among employees that entails shifting away from historical experiences of fixing problems and instead proactively putting in cognitive efforts to embrace change and engage in intentional and rational improvement activities (Carraro and Galeazzo, 2024).

In judicial review, the proactive law approach and legal design aim to proactively (*ex ante*) assess and develop the legal system, including its processes, policies and documents. This involves examining how processes are set up, how policies are established and how information is presented (Berger-Walliser, 2012; Legal Design Alliance, 2018). Proactivity emphasizes the importance of continuous improvement, which ensures that legal systems are not static, but are constantly refined to address new challenges and enhance effectiveness. By fostering a culture of testing and feedback based on empirical data and user experience, legal design could help identify failure points and improve user experience (Goertzen, 2020; Hagan, 2018, pp. 201–203; Karpen and Senova, 2021, pp. 4, 6).

While this article focuses on the public procurement remedies system, especially in the public procurement appeal procedure, it should still be acknowledged that the cases going through the court system stem from the preceding public procurement process. At best, a holistic approach to the problems should therefore be taken to understand which factors influence the processes and the objective of achieving access to justice. The legal literature already suggests measures that are outside the proceedings at the Market Court, a public procurement complaints board (Heikkinen, Halonen and Kurttila, 2023), but further data and investigations are needed to be able to improve the system holistically.

### 3.3.2 Customer point-of-view (user-centricity)

One of the fundamental principles and starting points of lean thinking is to *define value from the customer's point of view*. While lean thinking is often wrongly associated with cost reduction and efficiency, a true lean approach would entail analyzing value- and non-value-adding activities, and potentially *adding* features to the product or service and activities in the production process. A profound analysis of what it is that customer values, or what brings value to the customer, should lay the basis for the design of the whole production system (Womack and Jones, 1996).

The proactive law approach and legal design also emphasize the importance of understanding the needs, expectations and experiences of users—whether they are businesses, individuals or other stakeholders—and integrating these insights into the design and implementation of legal solutions ('Opinion of the European Economic and Social Committee 2009/C 175/05', 2009; Siedel and Haapio, 2010). The aim is to focus on the aspects that create value by making legal systems, services, processes and documents more user-centered, transparent and accessible (Hagan, 2018; Legal Design Alliance, 2018). In this context, well-designed legal forms have an important role to play, not only in improving accessibility but also in contributing to a sense of procedural and substantive justice (Hagan, 2023).

In the public procurement remedies system, instead of taking a court perspective on reforms, it would be important to broaden the view on what creates value to customers and also ask them (when possible) what they value. Legal processes involve two sides (claimant and respondent), as well as additional stakeholders (e.g., witnesses and experts) and public interests (rule of law, fair trial, general prevention) (Hines, Martins and Beale, 2008; Seepma, 2020). Zooming in on the public procurement legal remedies system, the first question to ask would be: Who is the customer? In this context, it cannot be ignored that defining *the*, or even *a* customer is not so straightforward when thinking about public goods and services (Schiele and McCue, 2011) and legal remedies, in particular. The answer to the first question is that legal remedies systems serve at least two categories of customers: the parties to a case who will have direct interests in the handling of the legal case on the one hand, and the general public on the other. The general public then has multiple interests in the matter, as the evaluation of value should consider both the user and beneficiary needs that have initiated the procurement process and the public interest in ensuring the right to a fair trial (Schiele and McCue, 2011). In general, public

procurement should optimize the value for money spent and ultimately provide value to customers through the public goods and services provided. From the customers' point of view, lean thinking provides tools for increasing system efficiency and general effectiveness, but the public setting brings multiple additional quality aspects and values that are not at the forefront in the manufacturing environment where it has its origins (Schiele and McCue, 2011). The proactive law approach and legal design can therefore provide additional legal dimensions (including accountability, transparency and fairness) when redesigning the public procurement remedies system.

A first issue to address in this context, however, is the lack of data regarding problems in the public procurement system, especially as seen from an access to justice point of view. This issue could be resolved by collecting more data from economic operators on their satisfaction with the current system and identifying the main failure points. Secondly, a guiding question for improvement would be to examine (and imagine) what it is that brings value to the tenderer: a full evaluation by the judiciary may not be the ultimate need and wish of a tenderer when they perceive that an error has occurred in the procurement. Instead, they may wish to see the perceived errors rectified as soon as possible after a decision is made. It is also possible that tenderers may just want and need to see more transparency and clarity throughout the procurement process and appeals procedure in order to gain a better understanding of the process and trust in the procurer and the remedies system, and to gain experience for the preparation of future bids. In either case, it would be important to include the tenderers' and other stakeholders' views in the evaluation of changes to the system and legislation.

### 3.3.3 Multi-professional collaboration

The proactive law approach and legal design approaches both emphasize the importance of multi-professional collaboration when developing legal solutions. Lean thinking is also described as a "collaborative approach to system design and improvement" (Schiele and McCue, 2011, p. 210). Designing new products and production systems or processes thus requires different professions and departments to work together to make output (again, what is valued) and process compatible (Womack and Jones, 1996).

When developing the legal system, these approaches emphasize the need to involve professionals representing diverse knowledge and parts of the system. The aim is to make the legal system more effective and accessible to users by addressing their needs through a human-centered and participatory approach. In judicial review, this multi-professional collaboration brings

together experts from fields such as law, design, technology and social work to improve the legal processes and policies. This collaboration helps ensure that judicial review focuses not only on legal accuracy, but also considers the practical, social and user-centered impacts of the law (Hagan, 2018; 2020; Karpen and Senova, 2021).

### 3.3.4 Streamlining processes

In judicial review, streamlining processes means creating clear, navigable pathways to help people understand and go through the legal process. In addition, to increase efficiency, streamlining processes aims to reduce the emotional or psychological energy that users expend navigating the system and to increase trust in using the legal system (Goertzen, 2020; Hagan, 2018, pp. 220–221; Karpen and Senova, 2021, pp. 10–12). Combined with lean thinking, the proactive law approach and legal design emphasize the use of prototyping and iterative testing as a way of making the system usable and efficient by removing waste (unnecessary process steps and activities) and unnecessary complexity. The design process is cyclical and iterative, with several phases that can be repeated in any sequence: identifying users and their needs, defining the problem, setting clear goals for the project, designing and creating prototypes, evaluating the results and making changes, if necessary (Berger-Walliser, Barton and Haapio, 2017; Clarke, 2020, pp. 13–18; Hagan, no date).

### 3.3.5 Design dimensions

In the context of judicial review of public procurement, legal design provides tools for developing an appeal system. This includes both the processes and legal documents. The aim is to make the legal processes, documents and forms more navigable, understandable and less intimidating to users (Goertzen, 2020; Hagan, 2018). This includes how legal information is communicated to users during processes and the clarity of legal documents (Sossin, 2017). This means, for example, designing the content, language and layout of legal documents (Berger-Walliser, Barton and Haapio, 2017; Hagan, 2018; Passera, 2017). Legal design also intersects with the concept of procedural justice, which assesses the fairness and transparency of the legal process as a whole, rather than focusing solely on outcomes (distributive justice) (Goertzen, 2020; Hagan and Kim, 2018). The aim is to ensure that legal systems are effective and perceived as fair and dignified (Hagan and Kim, 2018). Ultimately, it is about increasing trust, which is fundamental to the smooth functioning of legal systems (Karpen and Senova, 2021, pp. 7–8).

Legal design relies on the design sciences, but lean thinking has also been described as an approach to service design (Gray, 2008, p. 3). Lean thinking provides a value stream (i.e., value-enhancing) focus that enables looking at ‘production processes’ and ‘production systems’ in a holistic way to evaluate both the value created for customers as well as critically evaluating operations and discrete activities in the production process. When applied to the context and content of public services, lean thinking can address the values inherent in efficient service delivery (Gray, 2008, p. 3).

It is common for judicial systems that rules, forms and procedures are often communicated in legal jargon and are complex, involving multiple tasks, options and steps, making them difficult to understand quickly. As a result, users have experienced the court system as confusing, intimidating and even overwhelming (Hagan, 2018, pp. 208–209). Understanding the dimensions of access to justice, recognizing different experiences and perspectives and finding meaningful solutions to complex challenges requires a multi-dimensional and multi-professional approach (Hagan, 2018; Karpen and Senova, 2021, pp. 4–7; OECD and Open Society Foundations, 2019, p. 24). By adopting a participatory design approach, the judicial system can engage users and professionals to improve practices and foster innovation (Hagan, 2018; 2019). This is also emphasized by the Ministry of Justice Finland Workgroup (2024, p. 78) in their proposals for action—namely, that legal design should be used for planning legal services that are accessible and fulfil the needs of users and customers.

## 4. Conclusion

Access to justice is a constitutional right that ensures that individuals can obtain fair outcomes in legal matters and both enforce and defend their rights under human rights standards. This right also applies to economic operators, enabling them to seek redress and enforce their rights when participating in public procurement processes. The central role of the public procurement remedies system is to guarantee access to justice. The ultimate goal is to ensure that decisions taken by the contracting authorities can be reviewed effectively and as quickly as possible. However, according to the studies carried out in Finland, tenderers are reluctant to appeal procurement decisions and if they do, they often withdraw their appeal. Studies have identified several reasons for this, including the large number

of procurement appeals and long processing times at the Market Court. In addition, studies have shown that reputational risk, the desire to maintain good business relations with contracting authorities and fellow economic operators, lack of trust in the judicial review and lack of trust that errors made during the award stage would be corrected also serve as barriers to appeals and reasons for withdrawing appeals.

Although efforts have been made to improve the efficiency of the public procurement review system, mainly through legislative changes in line with EU initiatives, the focus has been on reducing the number of appeals rather than on improving the overall efficiency of the public procurement remedies system. These changes involve a top-down evaluation, typical of court systems, which rely on historical practices for providing services. From the perspective of tenderers, the legislative reforms have made the appeals process more challenging and less attractive, thus failing to improve access to justice as intended. The legal literature has also explored an alternative review system, the rectification system, whereby an authority reverses an incorrect decision, reconsiders the case and makes a new decision. It has been recommended that this procedure be extended to correct clear errors in the procurement process. In addition, studies have assessed that establishing a dedicated public procurement complaints board is seen as a promising solution for improving the efficiency of the public procurement judicial system.

To improve access to justice in the public procurement remedies system, additional measures seem to be needed. To further this discussion, we propose a combination of lean thinking, proactive law and legal design as tools and methods to redesign and make the public procurement remedies system more efficient, accessible, understandable and user-centered. These approaches have already been discussed in the context of the need for a law reform system and improving access to justice, though separately and only to a limited extent in Finland. Thus, we consider these approaches together to highlight how they can, in combination, provide new tools for redesigning the public procurement remedies system. We identified the following dimensions that integrate these three approaches: proactivity and continuous improvement, user-centricity, multi-professional collaboration, streamlining processes and design dimensions.

Proactivity, a key element of this integrated approach, involves the continuous improvement of proactive assessment and the development of legal systems. It means anticipating and identifying potential problems and

bottlenecks and preventing them, while also identifying and creating new opportunities for innovation and improvement within the judicial system. One of the fundamental principles and starting points is also user-centricity, which places users, their needs, experiences and expectations at the center. The aim of this approach is to define value from the customers' point of view. In the judicial system, the customer means the claimant and the respondent, but also other stakeholders, such as witnesses and experts. We need multi-professional collaboration to see, understand and improve the judicial system as a whole. This participatory approach involves avoiding silos and working together across different disciplines, professions and functions. The collaborative approach helps ensure that the judicial review process focuses not only on legal accuracy but also on practical and social issues. Lean thinking, a proactive law approach and legal design promote streamlining processes to remove inefficiencies and non-value-adding activities (i.e., waste) and create clear and navigable pathways through legal processes. They emphasize the use of prototyping and iterative testing as a way of making the judicial system usable and efficient, reducing also the emotional and psychological burden on users navigating the judicial system. Continuous improvement, in turn, ensures that these streamlined processes are regularly evaluated and refined based on feedback outcomes and evolving needs. Design thinking in public procurement judicial review provides tools and methods to improve processes, legal documents and communication. In practice, this means, for example, using information design and service design methods to enhance both the processes and legal documents. By focusing on user-centricity, the clarity of communication, language, content and layout of legal documents, we can make the judicial system more understandable, accessible and less intimidating for users.

We argue that the integration of lean thinking, proactive law and legal design into the public procurement remedies system enhances their common and complementary elements. Lean thinking provides tools for increasing the efficiency and overall effectiveness of the system. Meanwhile, proactive law and legal design provide practical tools and introduce multiple additional quality aspects and values. Together, these approaches ensure that the system is not only efficient but also fair, transparent and accountable.

While the integration of lean thinking, proactive law and legal design offers promising avenues to improve judicial review and access to justice in public procurement, it has some limitations. Established legal frameworks and traditional practices may be resistant to putting these concepts into practice, and implementation may therefore be slow and require time and effort

across organizations and professions, at least initially. Empirical studies are needed to move forward; more data must be gathered to properly evaluate the current state and problems, including customer satisfaction, and the decision-making processes and documents used within the procurement context. Future research should focus on testing the methods described above in practice to assess their impact on existing problems, such as efficiency, processing times, trust and access to justice in public procurement. This will provide valuable insights into how these approaches can be refined and effectively applied to address problems within the public procurement remedies system and ultimately create value for individuals, businesses and society as a whole and improve access to justice.

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