

Types of public procurement procedures – the overlap of public and private law

Abstract

The content of this thesis is the examination of the procedures of procurement public contracts and finding out how the overlap between public and private law manifests itself in practice and what impact it has on efficiency, transparency and fairness in spending public funds. The aim of the thesis is to analyze the individual types of public procurement procedures, their specifics, advantages and disadvantages and to find out how the whole procedure is affected by the interaction of public and private law and based on the findings, to propose measures to improve these procedures. The introductory chapter deals with basic terms and definitions and clarifies the basic legislative framework of public procurement procedures. It also summarizes the historical development of legislation and the basic principles on which this legal sector is based. In the next chapter, the procedures used in the procurement of public contracts are discussed and analyzed in detail, including examples of when it is appropriate to use individual procedures. These are mainly the open procedure, restricted procedure, negotiation procedure with prior publication, negotiation procedure without prior publication and others. The third chapter deals with the overlapping of institutions of public and private law. The procedure of public procurement and selecting economic operator requires compliance with strict and administratively demanding processes that are typical of public law. After the conclusion of the contract, however, the overlap between the contracting authority and the economic operator has a private law character and use the principles of commercial law apply. Because of this, there is a conflict between public law obligations and private law contractual freedom. The following chapter deals with selected case studies, which show the interaction of public and private law using examples from practice. The last chapter analyzes the theoretical outputs from the previous chapter and presents suggestions for possible improvements in public procurement procedures and presents possibilities for further research to find innovative approaches and solutions in the future. The thesis as a whole presents a discussion of the interweaving of public and private institutes in the field of public procurement procedures. At the same time, it analyzes theoretical and practical aspects that point to the difference between legal theory and practice. Thanks to this, it brings suitable institutes through which they will enable the effective use of the legal regulation of public procurement procedures.

Key Words: public procurement, procedures, public and private law