

The consequences of infringement of public procurement principles

Abstract

The topic of the dissertation is the consequences of infringement of public procurement principles. The key objective of this dissertation is to provide an answer to the pivotal research question whether the principles of public procurement represent an independently binding rule of conduct that is enforceable before public authorities or whether it only portrays a value basis and abstract goals of legal regulation that although having an important role in the interpretation and application of the law, do not in themselves give rise to specific obligations. The author further deals in the dissertation with the following subsidiary research questions, which derives from the pivotal research question mentioned in the previous sentence, namely (i) What are the differences between the consequences of infringement of public procurement principles when awarding a public contract through the procurement procedure in the sense of § 3 Act and outside of such a procurement procedure? (ii) What are the consequences of infringement of public procurement principles in the context of EU law and can compliance with these principles be enforced at the level of EU law? (iii) What are the consequences of infringement of public procurement principles in civil law and is it possible to claim damages in this context?

The dissertation is divided into five parts. The introductory part of this dissertation contains a thorough scrutiny of the individual principles of public procurement stated in the Act and their interrelationships as well as the analysis of the economic principles of public procurement. Furthermore with regard to the fact that public procurement is a highly harmonized legal area and in order to ensure greater complexity of the introductory part of this dissertation a basic analysis of the relevant EU legislation is added at its end.

The second part of this dissertation is focused on the specific consequences of infringement of public procurement principles in the procurement procedure in the sense of § 3 of the Act. First author deals with the instruments of protection of the participant of the procurement procedure against the incorrect procedure of the contracting authority. In the following chapters that are essential for the dissertation author presents the results of his analysis of the decision-making practice of the ÚOHS and related jurisprudence of administrative courts. In this part of the dissertation, the author also provides an answer to the pivotal research question.

The purpose of the third part of this dissertation is the identification and analysis of the differences between the consequences of infringement of public procurement principles when awarding a public contract through a procurement procedure in the sense of § 3 of the Act and

outside such a procurement procedure. In this context author focuses on the differences in the awarding of public contracts within the framework of special procedures according to part six of the Act and based on the exceptions according to Sections 29 to 31 of the Act. Also, within this part of the dissertation relevant outputs of the analysis of the decision-making practice of the ÚOHS and related jurisprudence of administrative courts are presented.

In the fourth part of the dissertation author deals with the consequences of infringement of public procurement principles in the context of EU law. Following the analysis of the relevant EU legislation the author identifies appropriate ways through which it is possible to defend against the infringement of public procurement principles at the level of EU law.

Finally, the fifth part of this dissertation is focused on the consequences of infringement of public procurement principles in the field of civil law. In this part of the dissertation author deals with the nature of the procurement procedure and the relationship between the Act and the Civil Code. The most significant output of this part of the dissertation is the analysis of the conditions for claiming compensation for damage caused by the contracting authority to an unsuccessful tenderer as a result of an infringement of public procurement principles, in civil proceedings.

Keywords

Public procurement, principle of transparency, principle of proportionality, principle of equal treatment, principle of non-discrimination.