

Title: Public remedies of defense in tender procedure focusing on review in administrative procedure

Abstract:

I have chosen the topic related to the public procurement law for my rigorous thesis. With regard to the fact that the issue is really extensive, I decided to focus just only on the specific area which is the control mechanisms of public procurements. Thus, the name of the thesis is derived from this issue and it is as follows: „Public remedies of defense in tender procedure focusing on review in administrative procedure“.

The main purpose of the thesis was a systematic analysis of public remedies of defense of suppliers against illegal procedure of contracting authorities in respect of the relevant practice of the Office for the Protection of competition and administrative courts and then the review of their effectiveness. The research question, which is derived from the main goal of the thesis, represents the introduction into the writing and it is defined as follows: „Are the remedies of defense of suppliers against the illegal procedure of contracting authorities sufficient and effective?“

The first part of the thesis is dedicated to the sources of public procurement law and to the interpretation of some principles of public procurement review. The next, crucial part of the thesis is already focused on the description of particular remedies of defense of suppliers and on the outline of related applicable problems. Defense against the illegal procedure of contracting authorities is possible to realize complexly in objection procedure onto the contracting authority, in administrative procedure, eventually in decomposition procedure in front of the Office for the Protection of competition and then in administrative justice in the proceedings against the decision of the president of the Office for the Protection of competition, eventually in cassation complaint procedure. The last option is to file a constitutional claim onto the Constitutional Court in case of infringement of constitutional guaranteed right or freedom of complainant.

In the following part, I provided the review of effectiveness of particular remedies of defense and the eventual future changes were proposed. At this point, I was partially inspired by the legal regulation of public procurement review in Slovakia. In practice, the basics of the factual success of affected supplier consists of the positive result of decision process in front of the Office for the Protection of the Competition. Therefore, I consider this institute to be the most effective one.

The final part of the thesis is dedicated to the answer for the research question, whereas it can be claimed that the conclusion of legal consequences for breach of the Act on Public Procurement Process is not sufficiently repressive and neither preventive when it comes to the action of contracting authorities. The current legislation of the conditions of application of analyzed remedies of defense does not represent the sufficient threat to the contracting authorities by which they would be forced to take a greater account of legality of their actions. The real conclusion of consequences of breach of the Act on Public Procurement Process is very lengthy and costly.