

Examination of the courts' jurisprudence in respect of public procurement cases

Act no. XL of 1995 on Public Procurement constituted Hungary's first piece of legislation in the area of public sector procurement. This Act was replaced by Act no. CXXIX of 2003 as of 1 May 2004, Act no. CVIII of 2011 as of 1 January 2012 and Act no. CXLIII of 2015 as of 1 November 2015. The frequent legislative changes at national and European Union level increased the volume and complexity of the applicable legal provisions.

As of 1 January 2010, Act no. CVIII of 2008 included a new type of integrated legal action in Act no. CXXIX of 2003. This action was introduced to enable the parties to request the review of the decisions of the Public Procurement Arbitration Board and claim from the court to declare a contract invalid due to the violation of the rules on public procurement. According to the applicable legal provisions, claims in which the parties request the competent civil court to declare a contract invalid due to the violation of the rules on public procurement should be joined to claims that are brought before the competent administrative and labour court with the aim of requesting the review of the decisions of the Public Procurement Arbitration Board. This "merger" of civil and administrative court proceedings raised a number of problematic issues. Act no. CXXIX of 2003 and Act no. CVIII of 2008 modifying the former Act set deadlines for the submission of appeals, the hearing and conclusion of cases and the provision of written judgements that are shorter than the ones laid down in respect of administrative court cases. Some of the legislative changes in recent years also affected the courts' competence: the previously applicable exclusive competence was abolished, while the administrative and labour courts were given competence to hear public procurement cases. As of 1 November 2015, two courts were appointed to deal with such cases on an exclusive basis.

The jurisprudence-analysing working group's research regarding public procurement cases is largely influenced by frequent legislative changes. Most recently, Act no. CVIII of 2011 that entered into force on 1 January 2012 was replaced by Act CXLIII of 2015 as of 1 November 2015. The latter Act has not yet been interpreted by the judiciary, therefore the working group is unable to examine the courts' jurisprudence in that regard. Thus, the working group's research is focused on the interpretation of those rules that have not been modified by the very last piece of legislation.

Dr. Gizella Márton
Head of the jurisprudence-analysing working group
Judge at the Administrative and Labour Department of the Curia of Hungary