

February, 2013

## **:: PUBLIC LAW NEWSLETTER**

### **I. RECENT CASE-LAW ON PUBLIC LAW MATTERS**

#### **Council of State 4447/2012** **(20/12/2012): Right to a prior hearing**

On petition for the annulment of an administrative act, on the grounds of violation of the right to a prior hearing (Article 20 par 2 of the Constitution), due to the omission of the administration to call the citizen for hearing prior to the issuance of the adverse (for the citizen) act, the Court ruled:

- That such a claim is admissible, provided that the petitioner makes reference to the allegations and claims that he/she would have expressed if properly called by the administration, and
- That when, by virtue of specific legal provisions governing the issuance of an adverse administrative act, there are administrative recourses available to the subject of such act (citizen, legal entity), the omission of the administration to call the citizen for hearing prior to the issuance of the adverse act, does not affect the validity/legality of the act, if the interested party exercises the right to administrative recourse and expresses all important allegations and claims, not expressed prior to the issuance of the act.

[Council of State 4467/2012 \(12/12/2012\): Just compensation for exceeding reasonable duration of administrative trial](#)

Articles 53-58 of law 4055/2012 introduce, as a new judicial remedy, the petition for just compensation for exceeding reasonable duration of administrative trial. This petition may be filed against the State by any party involved in an administrative trial (except by the State and/or public entities).

Upon such a petition, the Court found that:

- A period of more than eight (8) years, between the beginning and the end of the judicial procedure in question does not meet the requirements for reasonable duration of trial.
- The delay caused moral damage to the applicant, for the redress of which the court considers justified the petition and grants (just) compensation for the exceeding of reasonable duration of administrative trial.

## **II. RECENT LEGISLATION AND CASE-LAW ON PUBLIC TENDERS FOR THE PROCUREMENTS OF WORKS, SUPPLIES AND SERVICES**

Article 11 of Legislative Act issued on 04.12.2012 provides for the payment of a fee/levy equal to 1% (up to EURO 50,000) of the budgeted value (VAT included) of a public tender for the procurement of goods, works or services, as a prerequisite for filling a petition for temporary judicial protection (interim measures) before the competent administrative court. The same provision, by which Article 5 of law 3886/2010 is amended, is included in Article 28 of law 4111/2013 (Official Government Gazette A 18/25.01.2013), assuming

permanent/final nature (in comparison with that of the Legislative Act, which introduced the provision).

The Council of State issued judgments 737 and 738/2012 (of the Session competent for the provision of temporary judicial protection – the “Suspensions Committee”), with which the Supreme Administrative Court, ruled on issues of legality and validity of the provisions of article 11 of the aforementioned Legislative Act. In brief, the Court:

- Found that the provisions of article 11 is also applicable to cases which were pending before courts at the time when the Legislative Act was published in the Official Government Gazette.

- Found that article 11 establishes a limitation/restriction to the right for the provision of (temporary) judicial protection (Article 20 par 1 of the Constitution, articles 1 and 2 of Directive 2007/66/EC and article 6 par 1 of the ECHR), however, this limitation/restriction serves a legitimate purpose of public interest and is adequate in order to serve this purpose (prevention of filing obviously unfounded petitions for interim measures, which render public tenders more costly and time consuming). Therefore, the provisions violate neither the right for judicial protection nor the proportionality principle.

- In this regard, and overruling claims that the fee/levy introduced violates the proportionality principle, the court notes that the amount of the fee/levy under consideration cannot be considered to be excessive, taking into account the financial standing required and presumed for any company

participating in public tenders and also the limit of EURO 50,000 provided, which is considered reasonable; therefore the requirement introduced is a legitimate restriction to the right of judicial protection and it is not disproportionate to the objectives pursued with it.

- Finally, it overruled claims expressed by petitioners that the circumstances required (provided in Article 44 par 1 of the Constitution) for the issuance of a Legislative Act were not fulfilled; according to the abovementioned judgments, it falls within no court's jurisdiction to review this matter (whether there were extreme and extraordinary circumstances of urgent and unforeseeable need, allowing issuance of a Legislative Act).

The provision, which is disapproved of by the majority of companies participating in public tenders for the procurement of goods, works or services, is expected to contribute significantly to the acceleration of public tenders and the provision of judicial protection.

For any further comment or query on the above or any other issue, please liaise with the competent client partner or you may liaise with the Coordination Partner, who will refer you to the competent partner within KGDI.

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