Public procurement – comparison of the Czech and French legal regulations and their impacts on the economy

The thesis presents the results of the comparison of two European legal systems in the field of public procurement (PP). The author specialised in this field during her studies at the Faculty of Law, Charles University, and has since gained ample professional experience in the area of PP working as a clerk in a law firm. A stay at the University Pantheon-Assas, Paris, which specialises in commercial law and specifically in the PP, offered a unique occasion to compare the two legal systems with the view of finding solutions to some problems involved in the Czech law and practice.

To confirm what the most troubling issues in the Czech PP are, a number of practitioners were consulted, both economical lawyers and the legislators connected to the Act of Public Procurement. This query showed what indeed had seemed to the author to be the possible risks involved.

Both the Czech and the French systems are problematic in some respects, in the formulation of the law and in the practice. Though the problems and the solutions may be different in the two countries, the causes are comparable. The causes derive from the very principle. In comparison to other kinds of contracts, here the suppliers benefit from several features of the PP. First, the costumer, being the state itself, either directly (i.e. the government) or a dependent body (e.g. local authorities) is unlikely to undergo bankruptcy, delay payments or withdraw from the contract for the lack of finances, being financed through the state budget. Second, PP contracts are usually middle to long-term, which affords the supplier a certain economical safety. Also, though this is not always the case, a great percentage of PP involves large sums of money, especially direct PP contracts from the government.

It is interesting to observe the different kinds of problems that result from this during and even after the competition. In France, PP contracts tend to be awarded to small and medium enterprises as an instrument of social support. However, such practice is forbidden under the European Law as discriminatory.

For reasons of both culture and deficiency of the relevant acts, the situation is different in the Czech Republic. Certainly, where large sums of money are involved, corruption is always an issue and sadly the Czech Republic is not an exception to the

rule. However, from the point of view of the law, this is not technically a problem of the PP act (Czech or French). It is rather the loopholes left in the law that call for change. Under the current Czech legislation, there is a way to evade the results of the competition by acquiring the contract from the winner in the form of a new company whose sole business asset is the relevant PP. Thus, the costumer is bound by contract to a different body than the one chosen in the public competition.

Here the French law could be an inspiration de lege ferenda. In such a situation, the costumer (the state or the local authority) may chose to re-evaluate the "new" supplier under conditions similar to those of the original competition and either agree to continue in the original contract or withdraw should the new supplier prove less trustworthy, less dependable for service or otherwise suspect.