



Legal update

January 2025

Weinhold Legal

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News in legislation

A new Act on Public Auctions has entered into force, which, among other things, expands the definition of the term "auctioneer", abolishes the concept of "transfer of ownership by affixing a bid" and introduces the Central Register of Public Auctions under the auspices of the Ministry of the Interior.

Case law

On the nature of security under Section 41(8) of the Public Procurement Act: The Supreme Court has confirmed that security under the Public Procurement Act has a penal function in addition to its security function. Its purpose is to motivate the participants in the tendering procedure to fulfil their obligations.

On the necessity to invoke the relative invalidity of a legal act against the other party in the case of fraudulent conduct: the Supreme Court has held that even if a party to a legal act acts with fraudulent intent, it is necessary to invoke the invalidity of the legal act against such party, otherwise the invalidity of such legal act will not arise.

The information contained in this bulletin is presented to the best of our knowledge and belief at the time of going to press. However, specific information related to the topics listed in this bulletin should be consulted before any decisions are made.

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News in legislation

New law on public auctions

On 1 January 2025, Act No. 250/2023 Coll., on Public Auctions ("**New Act**") entered into force, which replaces the previously effective Act No. 26/2000 Coll., on Public Auctions ("**Old Act**") in its entirety. According to the explanatory memorandum, the new legislation aims primarily to eliminate inconsistencies with Act No. 89/2012 Coll., as amended, i.e. with the Civil Code ("**Civil Code**"), to increase the regulation of auctions conducted electronically, to introduce sanctions for breaches of basic legal obligations and to remove unnecessary burdens on the addressees of the law.

The new law partially removes the existing ambiguity between the terms "public auction" and "auction". According to the previous legislation, the term "public auction" was used in connection with the old Auction Act and the term "auction" was used when an "auction" was conducted pursuant to Section 1771 of the Civil Code. Whereas an auction under the old law had precise statutory rules, an auction under the Civil Code was only minimally regulated by law and the setting of the rules of the auction was thus largely left to the seller, which could lead to auctions being less advantageous for bidders than auctions and participation in auctions being accompanied by less legal certainty. Given that the new law defines an auctioneer as an entrepreneur (within the meaning of Article 420 of the Civil Code), anyone who conducts a public auction without having the relevant authorization to do so will also fall under the auction regime under the new Auction Act. Entrepreneurs conducting public auctions will no longer be able to use the "auction regime". However, it will still be possible to hold "non-business public auctions," such as those at charity or cultural events, to which the new law will generally not apply.

The main conceptual change introduced by the new law is a change in the way in which ownership of the auctioned object is acquired at a public auction. According to the previous regulation, the ownership right was to be transferred by the actual bidding. However, under the Civil Code, the transfer is perceived as a way of acquiring the right of ownership which is independent of the will of the original and new owner (it occurs, for example, in the case of inheritance or retention of title), as opposed to the transfer of the right of ownership, which is always based on the will of the persons involved. However, in a public auction, there is undoubtedly a manifestation of intent on the part of at least the parties to the auction and the use of the term 'transfer' is therefore imprecise. According to the new law, the auction does not involve the transfer of ownership, but the conclusion of a contract under which ownership is transferred. After the auction, the auctioneer will issue a certificate of conclusion of the purchase contract by affixing the affixed title.

As of 1 January 2025, the so-called Central Register of Public Auctions ("CEVD") has been newly launched at <https://cevd.gov.cz/>, through which the Ministry of Regional Development publishes key aspects of public auctions (e.g. auction decrees, information on the abandonment, non-execution or termination of an auction, or records of the price achieved by the auction).

Other changes introduced by the new law include, for example, that:

- ▶ the new law explicitly allows for the so-called Dutch method of bidding, where the auctioneer gradually lowers the starting price and awards the bid to the first bidder who submits a bid equal to the starting price;
- ▶ a person with a pre-emptive right who wishes to exercise it and who does not have a predetermined purchase price will now have to participate in the auction, where he will have the opportunity to exercise his right by matching the highest bid;



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- ▶ the new law simplifies the auctioning of movables with a starting price of less than CZK 300,000 (instead of the previous CZK 200,000); and
- ▶ the new law introduces misdemeanors for which a fine of up to CZK 1,000,000 can be imposed

Act No. 251/2023 Coll., which amends certain acts in connection with the adoption of the Act on Public Auctions, namely the Trade Licensing Act, the Real Estate Tax Act, the Value Added Tax Act, the Capital Market Enterprise Act and the Cadastral Act, also comes into force in connection with the new Act.

Case law

On the nature of the security pursuant to Section 41(8) of the Public Procurement Act

(Judgment of the Supreme Court, Case No. 28 Cdo 1334/2024 of 3rd October 2024)

The Supreme Court of the Czech Republic, in its decision No. 28 Cdo 1334/2024 of 3 October 2024, heard the appeal of the applicant, who sought the return of the security within the meaning of Section 41(8) of Act No. 134/2016 Coll., on public procurement, as amended until 15 July 2023 ("**Public Procurement Act**" or "**PPA**"), deposited when participating in a public procurement ("security").

The defendant published the tender documents, thereby inviting tenders for the contract. The applicant made a tender and at the same time provided security of CZK 200 000. The defendant was subsequently selected as the contractor and was invited by the defendant to sign the works contract. The applicant refused to sign the works contract by written notice to the defendant. Following that refusal, the contracting authority excluded the defendant from further participation in the tender procedure in accordance with section 124(2) of the Public Procurement Act. The defendant notified the applicant that it was exercising its right to performance under the security. The defendant subsequently cancelled the tender procedure on economic grounds.

The applicant brought an action before the Municipal Court in Brno, seeking the return of the security, including interest. The Municipal Court dismissed the action and the Regional Court in Brno upheld that decision. Both courts concluded that the security under the Public Procurement Act does not serve as a 'refundable deposit' to cover any damage incurred, but must also be seen as a penalty for the breach of the party's obligation. The courts further held that the fact that the contracting authority retained the security even though it did not proceed with the procurement procedure did not constitute a breach of good morals.

The applicant filed an appeal in the case. The applicant argued, inter alia, on the basis of a systematic interpretation of the law, i.e. that the concept of 'security' under other legal provisions serves essentially as an advance payment for any damage incurred, as opposed to a contractual penalty, which serves as a lump-sum penalty for failure to fulfil an obligation, whether or not damage has been incurred. The Supreme Court accepted the validity of the applicant's contention that, in a State governed by the rule of law, it is necessary, for reasons of legal certainty, to use uniform designations for identical legal institutions. However, it also held that there is an exception to that rule, namely where the legislature has expressly or implicitly provided for a difference in the meanings attributed to a single sign.

The Supreme Court addressed the very meaning of certainty. With reference to the literature, it found that the institution of security is linked to the tendering period under the PPLA, the purpose of which is to set a time period within which the parties are bound by their offers. The purpose of the security is thus to ensure that the bidder is bound by

the offer it has submitted, to select genuine bidders for the public contract from speculative bidders, to sanction the bidder in the event that it fails to fulfil its obligation, to compensate for any damage and potentially to verify the supplier's ability to fulfil its obligations under the contract for the performance of the subject-matter of the public contract.

In order for the contracting authority to benefit from the guarantee, the following conditions must be cumulatively met:

1. the tenderer's participation in the procurement procedure has ended;
2. it has occurred within the tendering period;
3. as a result of the exclusion of the tenderer by the contracting authority; and
4. the exclusion is due solely to the participant's failure to submit data, documents or samples at the request of the contracting authority, where the contracting authority has made their submission a condition of the contract, or where the result of the sample tests does not comply with the terms of the contract, or where the participant has not concluded a contract with the contracting authority for the performance of the subject-matter of the contract without undue delay after the expiry of the standstill period.

The Supreme Court came to the same conclusion as the Court of Appeal and the Court of First Instance, namely that the security under the ZZVZ Act cannot be perceived only as a means of security, but also as a sanctioning instrument, which is applied when the above-mentioned conditions are cumulatively met.

On the necessity to invoke the relative invalidity of a legal act with the other party in the case of fraudulent conduct

(Judgment of the Supreme Court of the Czech Republic Case No. 24 Cdo 2099/2024 of 20th September 2024)

The Supreme Court of the Czech Republic addressed the issue of whether a criminal offence can cause the invalidity of a legal act in its judgment No. 24 Cdo 2099/2024 of 20 September 2024.

The applicant was sold a vehicle which the seller (N s.r.o.) then retained in its use. N s.r.o. then sold the vehicle to the defendant without being entitled to do so. The vehicle was sold to the defendant at the normal price and was duly registered (the defendant was therefore in good faith). However, the plaintiff believed that the vehicle remained in its possession. The managing director of N Ltd was subsequently convicted of several offences and the vehicle was taken into judicial custody. Both the plaintiff and the defendant subsequently sought the return of the object of the custody, i.e. the vehicle.

The court of first and second instance dismissed the plaintiff's claim for substitution of the defendant's consent to the release of the object of the escrow. The courts' reasoning was based primarily on the fact that the plaintiff had neither alleged nor proved the invalidity of the purchase agreement between N s.r.o. and the defendant. Although the applicant had argued the invalidity, it was only in the context of the proceedings in which it sought to replace the defendant's consent - N s.r.o. was not a party to those proceedings.

The plaintiff subsequently filed an appeal, in which it contested, in particular, the arguments of the courts that the fraudulent conduct of one of the parties to a legal transaction does not cause the absolute nullity of the concluded purchase contract, but only a relative nullity, which must be contested against the party with whom the purchase contract was concluded (including through the court).

According to the Supreme Court, a legal act would be absolutely void



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only if all the participants acted with fraudulent intent (here there would be a contradiction with public policy and there would be no need to plead nullity, because the legal act would be void ex lege). However, if the criminal act was not committed by all the parties to the legal transaction, it is necessary for the party who acted in good faith to invoke the nullity of the contract against the other party or parties to the legal transaction, even if there is a final judgment of conviction in respect of such fraudulent conduct. The Supreme Court therefore dismissed the appeal.

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