

## The Supreme Administrative Court has definitively repealed the contested fee rates under the Public Procurement Act

The judgment of a five-member panel of the Supreme Administrative Court dated 29 February 2016 upholds the judgment of the same court which repealed Regulation No 196 of the Council of Ministers of 10 July 2014 on the approval of the fee rates applicable to proceedings under Chapter Eleven of the Public Procurement Act before the Commission for the Protection of Competition and the Supreme Administrative Court (promulgated in The State Gazette, No 58 of 15 July 2014 and entered into force on 15 July 2014).

The Commission for the Protection of Competition applied those fee rates for a quite long period of time to collect fees on complaints against decisions, action or inaction of contracting authorities under the Public Procurement Act in the amount of 2 % of the estimated value of the public procurement contract with a maximum of BGN 15,000. Proportionate fees were collected also in the cases of appeal against decisions of the Commission before the Supreme Administrative Court and private complaints lodged against rulings of the Commission.

It was for the first time that the fee rates introduced administrative proceedings with a fee collected on a pro rata basis and in such big amounts. Lawyers and bidders in public procurement tenders criticized the fee rates because of the constraint for most market participants to exercise their right to complain due to the fee rates.

Having been seized on the matter, the Supreme Administrative Court repealed the fee rates definitively. The court noted the procedural violations in the adoption of the fee rates regulation because of the flaws in the public discussion process and it further upheld that the fees calculated in accordance with those rates failed to meet the requirements laid down in the State Fees Act as those fees did not take into consideration the income level and property of the citizens and, for all practical purposes, they restricted the citizens' right of access to justice, which is enshrined in the Constitution.

What follows is the discussion and adoption of a new draft of fee rates to be collected in proceedings under Chapter Twenty-seven of the Public Procurement Act before the Commission for the Protection of Competition and the Supreme Administrative Court, which provides a much more appropriate method to calculate fees, in which the maximum amount is limited to BGN 5,000 (for public procurement contracts worth more than BGN 5,000,000).

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The new fee rates are expected to enter into force on 15 April 2016 and be applied together with the new Public Procurement Act that will enter into force on the same date.