

public procurement - legal changes published in November 2019

Decision of the High Court of Cassation and Justice no. 38/2019 regarding the unraveling of some legal issues was published in the Official Gazette of Romania, Part I, no. 902 of November 8, 2019 and is applicable from the same date.

The Cluj Court of Appeal, Section III, administrative and fiscal litigation, has notified the High Court of Cassation and Justice regarding the issuance of a preliminary ruling for the unravel of the following question of law: *"What is the interpretation to be given to the notions of **estimated contract value**, and **established contract value**, within the meaning of the provisions of art. 611 paragraph (1) of Law no. 101/2016 on remedies and court actions regarding the awarding of public procurement contracts, sectoral contracts and works and services concession contracts, as well as for the organization and operation of the National Council for Solving Complaints, with subsequent amendments and additions?"*.

Thus, the referring court showed that, starting from the meaning of the terms of *estimated value* and *established value*, it would be natural to consider that the value of a contract is estimated throughout the award procedure, even after the moment when the successful bidder is designated, taking into account that at that time the conclusion of the contract and consequently, its value, are not yet certain.

Although the High Court of Cassation and Justice rejected as inadmissible the referral of the Cluj Court of Appeals, because it was found that the question of law discussed had not received a contrary interpretation until now, and, moreover, the case law is unanimous regarding the application of art. 61¹ paragraph (1) of Law no. 101/2016, we consider, however, that it is worth upholding the conclusions of the High Court of Cassation and Justice set out in the recitals of its decision.

As a consequence, after analyzing the national case law on this question of law, including a final decision of the referring court, the High Court of Cassation and Justice notes that the unanimous orientation of the courts is as follows: in the interpretation of art. 61¹ par. (1) of Law no. 101/2016, also referred to in par. (2) of the same article, the phrase *"estimated contract value"* refers to the **contract value to be awarded**, that is, the one published in the SEAP, while *"the established contract value"* refers to the **contract value that was concluded**, which is the value written in the contract.