

Țuca Zbârcea & Asociații obtains a referral for a preliminary ruling to the CJEU in a public procurement dispute in the field of innovative medical technologies



Țuca Zbârcea & Asociații obtains a referral for a preliminary ruling to the CJEU in a public procurement dispute in the field of innovative medical technologies, from the Cluj Court of Appeal, which concerns the lawfulness of restrictive technical specifications in the tender documentation, in connection with the "objective necessity" of the contracting authority.

The Cluj Court of Appeal admitted the application for a preliminary ruling to the CJEU in a national dispute concerning the challenge to the technical specifications in the tender book and the restriction of access to the tender procedure, on grounds related to the contracting authority's margin of appreciation in defining its own objective needs.

The dispute before the national courts regards the congruence between the contracting authority's margin of appreciation in determining its own objective needs, which represent the fundament of the public procurement procedure, and the obligation to abide the fundamental principles governing the public procurement procedure, as provided by both national and EU law.

Before the national court, the contracting authority relied on the margin of appreciation in defining the framework of the award procedure, citing the prohibition on censoring the opportunity of the public procurement procedure.

Before the appeal court, the lawyers of Țuca Zbârcea & Asociații argued the relevance of a preliminary ruling to the CJEU with respect the relationship between (i) the objective needs of the contracting authority, which should be determined before the publication of the tender documentation, in correlation with the restrictive technical specifications, and (ii) the principle of transparency and free access of tenderers to the tender procedure, related to the relevant factual elements for the court.

A team of lawyers from Țuca Zbârcea & Asociații specialised in administrative litigation and public procurement procedures built a robust defence strategy for the client, a major player in the medical robotics industry, before the Cluj Court of Appeal. The team is led by [Christina Vladescu](#) (Partner, Dispute resolution) and includes [Iuliana Leon](#) (Managing Associate, Public Procurement), and [Luciana Duțu](#) (Senior Associate, Dispute resolution).

“The request for a preliminary reference was granted by the Cluj Court of Appeal, which admitted the three proposed questions and referred the matter to the CJEU, also noting the urgent nature of the proceedings before the national court. The importance of the referral before the CJEU is also underlined by the fact that national courts have generally been reluctant to rule on the exercise of margin of discretion by the contracting authority, given the fact that the CJEU case law constantly refers this volatile prerogative of the contracting authority”, stated

Christina Vladescu.

Țuca Zbârcea & Asociații has a leading practice in Dispute Resolution, the firm's pre-eminence in this area being already acknowledged by renowned international publications, such as *Chambers & Partners*, *Legal 500* and the *Global Arbitration Review*.

More so, the firm is a recipient of the “*Law Firm of the Year in Romania for Dispute Resolution*” Award by Benchmark Litigation Europe (a publication of Euromoney Legal Media Group), one of the most coveted and prestigious international accolades for law firms specialising in litigation and arbitration.