Barriers for SMEs in the context of public procurement in the Czech Republic

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Abstract
Public procurement in the Czech Republic is a complex process directly defined by law. The following text deals with the identification and evaluation of the most serious barriers for small and medium-sized enterprises as potential tenderers in the Czech Republic. The article discusses the identification of barriers to possibility of SME’s to entry of procurement market in the Czech Republic. The topic reveals the relevance of the individual barriers for SME’s and possibilities of their elimination or mitigation. All of this in the context of the current decisional practise of the Office for Protection of the Competition (OPC) and case law.

Key Words
Small and medium-sized enterprises (SMEs), public procurement, the barrier to entry the public procurement market, case law, decision practice, qualifications of tenderers, contracting authority (CA).

Introduction
The issue of public procurement is often professional public (and general public) discussed theme not only in the CR but also around the world. OPC and Czech courts as the supervisors of public procurement has very extensive decision-making practise and jurisprudence of the issues of public procurement. Public procurement makes a significant part of the expenditure of each state budget. In the CR government procurement "flow through" estimate around 500-600 billion CZK. Of about 500-600 billion CZK "flow through" government expenditures in the CR every year.

SMEs as tenderers have during the procurement procedure to face frequently disproportionate and discriminatory requirements that are laid down by public authorities in the specifications of public contract, which could be identified as barriers for SME’s to entry public or participate on procurement market in CR. Important role in the allocation of public
funds is played by SMEs enterprises in the CR because of the production of SMEs is reallocated in the economy of the state (eg taxes, employee wages, distribution of profits, etc.) and the profits of SMEs are not led outside the country.

Tab. 1: Development of the public procurement market in the years 2006 - 2011

<table>
<thead>
<tr>
<th></th>
<th>2006</th>
<th>2007</th>
<th>2008</th>
<th>2009</th>
<th>2010</th>
<th>2011*</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Contracting authorities (CA)</strong></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>bil. CZK</td>
<td>446</td>
<td>423</td>
<td>457</td>
<td>503</td>
<td>475</td>
<td>435</td>
</tr>
<tr>
<td>% GDP</td>
<td>13,3</td>
<td>11,5</td>
<td>11,9</td>
<td>13,5</td>
<td>12,6</td>
<td>11,4</td>
</tr>
<tr>
<td><strong>Sector contracting authorities</strong></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>bil. CZK</td>
<td>104</td>
<td>51</td>
<td>79</td>
<td>79</td>
<td>119</td>
<td>61</td>
</tr>
<tr>
<td>% GDP</td>
<td>3,1</td>
<td>1,4</td>
<td>2,0</td>
<td>2,1</td>
<td>3,2</td>
<td>1,6</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>bil. CZK</td>
<td>550</td>
<td>474</td>
<td>535</td>
<td>583</td>
<td>594</td>
<td>496</td>
</tr>
<tr>
<td>% GDP</td>
<td>16,4</td>
<td>12,9</td>
<td>13,9</td>
<td>15,6</td>
<td>15,7</td>
<td>13,0</td>
</tr>
<tr>
<td><strong>bil. CZK</strong></td>
<td>3 353</td>
<td>3 663</td>
<td>3 848</td>
<td>3 739</td>
<td>3 775</td>
<td>3 809</td>
</tr>
</tbody>
</table>

*Note: Preliminary data  
Source: Annual report of the Ministry of Regional Development, 2012

In the past, the most discussed issue was view on public procurement from the side of the CAs. The Ministry for Regional Development has even formulated the methodology for CAs. View of the procurement from the tenderers side is still rather overlooked issue. This article focuses its attention for SMEs and the barriers they have to face in public procurement issues.

**Objectives and methodology**

The main objective of this paper is to identify the most common barriers to the SMEs in the context of their ability to participate on public procurement in the Czech Republic. The identification of these barriers is important to propose the possibility of their elimination. The objective of this paper is also to identify the barriers that currently prevent SMEs to their possibility directly participate in public tenders, and at the basis of the identification to suggest opportunities to remove these barriers.
A methodological contribution of this topic is mainly based on Act No. 137/2006 Coll., Public Procurement, as amended (hereinafter, the "Act" or "law"), which is currently valid legal regulations for public procurement in the Czech Republic and the related implementing legislation. Paper si further based on the content analysis of the current decision-making practice and case law relating to public procurement in the Czech Republic. Last but not least are used the results of communication with representatives of SMEs and their direct view on the possibility to participate in public procurement in the Czech Republic. At the beginning of the result part is also made an excursion up the specialized foreign original text that solves the issue of barriers for the participation of SMEs in public procurement.

Results
In the last years, the attention of the European Union in the field of public procurement begins with focusing at the SMEs and their possibilities to participate in public tenders. Government policy is currently starting to try to modify national legislation in a direction that would support opportunities, particularly SMEs to participate in public tenders. In September 2010, a study\(^1\) published by GHK drawn up for the European Commission on the evaluation of SMEs' and their possible access to European Union public procurement market. On the basis of this study it was found that SMEs in the Czech Republic "get" only 16% of the government expenditures for public contracts.

This study is based on the initiative of the European Commission\(^2\) from 2008, which declares the European Union's efforts to improve access of SMEs to public procurement. According to the statistics of the European Commission\(^3\) in the year 2012 in the Czech Republic is estimated for about 930,940 SMEs making up 99.9% of the total number of enterprises in the Czech Republic with a share of nearly 70% of total employment in the private sector and the production of 46 billion added values. These data clearly show the importance of SMEs Czech Republic and the European Union as a whole "engine" of the economy of the community.

From the scientific community deals with the SMEs as a part of the world of public procurement Loader (2011), who concludes that SMEs participate tender procedures especially in cases when public authority has laid down as an evaluation criteria

\(^1\) Evaluation of SMEs’ access to public procurement markets in the EU (GHK, 2010), Study for European Commission, DG Enterprise and Industry
\(^3\) SBA Fact Sheet 2012 – Czech republic, Available from:
cost and quality performance. Simultaneously points out that SMEs prefer to participate in the case of open procedures, where a shorter contracts with lower volumes of transactions are tendered. He also notes that currently the CAs mainly focus on the price performance, not on quality, which prevents SMEs from participating in procurement procedures. The creators of public procurement legislation, although focus on supporting SMEs but there are still many barriers that prevent these companies from effective competition, hampering further development in the field of public procurement (Loader, Lundberg, 2013).

A view on the opportunities and barriers for SMEs in the UK in terms of its legislation on public procurement brings for example PICKERNELL, KAY, PACKHAM, MILLER (2011).

Outside the European Union Lungberg and Nakabayashi (2013) in their thesis focus on empirical analysis of the Japanese auctions related to construction works and opportunities to participate in these auctions for SMEs removing barriers to their participation (unreasonable demands of contracting qualifications, etc. favoring large companies). The empirical study shows that the 'release' requirements to potential suppliers in connection with auctions of construction works resulted in increased participation of SMEs in public construction auctions by almost 40% without affecting the deterioration of the performance of contracts relating to the possible lack of capacity of SMEs.

**Barriers to entry public procurement market for SMEs in the Czech Republic**

In the context of the identification of the most common barriers is possible to base from the document of the European Commission that includes the result processed from 1,000 medium and small businesses or organizations that represent these companies which also includes a view of SMEs to public procurement in the European Union. The results show that SMEs in particular, prevents unreasonable requirements on their economic capacity, inappropriate use of quality criteria in the evaluation of public contracts by CAs and not the least bureaucracy administrative burden associated with the preparation of bids in tenders. Following the results of this survey in connection with the development of the public procurement market in the EU the new draft EU directives on public procurement was developed which will soon be their first reading in the European Parliament.

During identification of barriers for SMEs in their opportunities to participate in public procurement in the Czech Republic is in the first phase to introduce some restrictive

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4 European Commission Act following consultation of the "Top Ten" with SMEs on EU regulations
assumption of this text. The starting point for the identification of barriers to entry PP in this text are barriers that directly or indirectly generates just the law itself in relation to CAs.

Out of other potential barriers not related to the law or not sanctioned by law (economic, environmental, social, physical, etc.) is in this text abstracted and could be used as a topic for further investigation. Based on the reaching approximately 50 SMEs (operating in the construction, supply and services area), as well as decision-making practice of the OPC and the related case law are in the text below described and identified the most common barriers for SMEs that prevent their potential for public procurement market in the CR and thera are described their effects on public procurement market.

The following table and related to graphic expression recorded as scale order division barriers to entry public procurement according to their importance for SMEs.

**Tab. 2: Identification of barriers to entry public procurement by SMEs**

<table>
<thead>
<tr>
<th>Rank</th>
<th>Barriers to entry</th>
<th>Average of the values obtained</th>
</tr>
</thead>
<tbody>
<tr>
<td>1.</td>
<td>The qualification requirements</td>
<td>1,66</td>
</tr>
<tr>
<td>2.</td>
<td>The cost of making bid</td>
<td>2,82</td>
</tr>
<tr>
<td>3.</td>
<td>Inappropriate partial evaluation criteria</td>
<td>3,28</td>
</tr>
<tr>
<td>4.</td>
<td>Excessive administration</td>
<td>4,18</td>
</tr>
<tr>
<td>5.</td>
<td>The formality of procurement process</td>
<td>4,36</td>
</tr>
<tr>
<td>6.</td>
<td>Other (undefined)</td>
<td>4,74</td>
</tr>
</tbody>
</table>

*Source: Results of the author*
Disproportionate qualification requirements for suppliers

This group of barriers belongs currently in the field of public procurement law to the largest and most common which is confirmed by the results of research among SMEs that identified them as the most serious barriers. Experience and extensive decision-making practice and case law simultaneously follows that from the part of CAs are the requirements for qualification most commonly abused. Also from cross section addressed to the suppliers from SMEs were unreasonable qualification requirements from the part of CAs identified as the greatest barrier to ability of SMEs to participate in the "larger" public contracts in the country, despite the fact that under other conditions these companies could manage such contracts smoothly realized.

In connection with the qualification of suppliers can also refer to a guided literature to Act (see e.g. ŠEBESTA, 2006, RAUS, 2011, JURČÍK, 2011, JURČÍK, 2011).
The Act and follow practice divides the requirements for qualification into 3 basic groups that were from the part of SMEs most often described as greatest barriers to the possibility of realising public procurement.

1. Basic qualification requirements

Out of communication with suppliers SMEs follows that this group of requirements considered administratively most difficult. This is a group of requirements by which suppliers demonstrate a basic competence in public contracts in general. From the perspective of the law, these requirements are a "gateway" for the effective possibility to tender for contracts. In fulfillment of these requirements through to the administrative burden are not usually from the part of SMEs any problems. Remains problematic approach CAs for assessment of qualifications because in case of absence any of the documents proving the basic qualification requirements has CA just free option to add the document request, not an obligation. The free option is often abused from the part of CAs and suppliers are often excluded for formal and relatively easy refillable errors in their bids. Simultaneously also the practice the OPC in this regard is rather strict.

- Decision of OPC r. n. ÚOHS-S356/2010/VZ-17647/2010/530/IWe from 30.11.2010 – confirmed by the CAs decision about the adequacy of disqualification for submitting false affidavit to fulfill some basic qualifications.
- Decision of OPC r. n.ÚOHS-S667/2012/VZ-4389/2013/511/JPo from 11.3.2013 – OPC stated the legitimacy of CA to exclude a tenderer from the tender procedure for evidence confirming the tax authority that was more than 90 days without having an obligation CA candidates to invite to enhance this document.
- Decision of OPC r. n. ÚOHS-S141/2013/VZ-13236/2013/514/PJa from 15.7.2013 – OPC stated unlawful exclusion of a tenderer by the CA which made him redundant despite the fact that the tenderer retrospectively was invited by the CA to prove fulfill of the basic qualification requirement.

When refilling the basic qualification documents is important that it must be taken especially for the time in which the basic qualification is required to prove (the deadline for submission of tenders, not after the deadline). To this is important to think mainly at an additional proof of qualification.
2. Professional qualification requirements

Within this group of qualifications CA verify the professional capacity of tenderers. Tenderers as mandatory legal requirement submit a certificate of Incorporation and extract from the Trade Register. However, CAs often abuse the professional qualification requirements when requesting unreasonable professional requirements that are not necessary as a prerequisite for the execution of the contract (unreasonable requirements for education, qualifications, experience, certification, members of the team, etc.).

- Judgment of the Regional Court in Brno r. n. 62 Ca 13/2009 – 67 from 7.4.2011, that validated decision of OPC r. n. S115/2008/VZ-13469/2008/530/Kr from 7.7.2008 – request CA for authorization for execution of an official measurement of the speed for road vehicles is not necessary for the realization of the subject of the public contract.

- Decision of OPC r. n. ÚOHS-S151/2013/VZ-15420/2013/521/VČe from 15.8.2013 – in relation to the requirements of CA for prove professional qualification requirements OPC identified as discriminating CA request for submission of the registration in the list of attorneys maintained by the Czech Bar Association while this document was not necessary to subject of the public contract.

3. Economical qualification requirements

Because of so called “Great transparent amendment of Act” that came into force on 1 April 2012 was qualification requirement canceled and replaced only by submitting an affidavit about the fulfillment. Until then this qualification requirement was abused very often with negative impact particulary to SMEs tenderers that was automatically indirectly excluded from the possibility of submit a bid in the public contract. Discriminatory was requirements of CAs on disproportionate size of companies turnover, liquidity indicators, profits etc. that was not necessary to realize the public contract. This prerequisite is accompanied by a fairly large decision-making practice of OPC and judicature.

- Decision of OPC r.n. ÚOHS-S209/2011/VZ-15677/2011/520/Mne from 17.10.2011 – OPC held discriminating CA requirement of turnover of the tenderer in the last 3 years whose amount was due to the expected value of a public contract unreasonable.

- Judgment of the Regional Court in Brno 62 Af 51/2011-58 from 2.8.2012 that was validated by judgment of The Supreme Administrative Court in Brno 2 Afs 64/2012 – 48 from 12.4.2013 – judgment stated discriminatory requirement to the size of the companies turnover, that was not necessary to realize the performance of the public contract.
4. Technical qualification requirements

Technical qualification requirements are from the perspective of the law approximately the largest possibility for CAs to discriminate potential tenderers. The amendment to Act in force from 1.4.2012 has eradicated the possibility of CAs request various quality management systems such as ISO, OHSAS, etc. This will certainly prevent abuse of this option by the CAs. The possibilities to restrict competition just through disproportionate technical qualifications requirements are still quite wide. Because the technical qualification requirements are probably the biggest possibility for CAs to unduly discriminate tenderers there is also probably the most extensive decision-making practice of OPC and case law. Therefore, it is appropriate to relevance in this context also some judgments of the Supreme Administrative Court in Brno.

- Decision of OPC r.n. ÚOHS-S359/2012/VZ-15042/2012/520/PDr from 10.8.2012 – CAs against the law required a list of the works for the last two years instead of the last 5 years, as published in the law.
- Decision of OPC r.n. ÚOHS-S551/2011/VZ-8180/2012/550/SWa from 11.7.2012 – discriminating is such a requirement for proving technical qualification that is not able to demonstrate any other tenderer on the market
- Decision of OPC r. n. ÚOHS-S660/2012/VZ-15424/2013/521/SWa from 15.8.2013 – disproportionate requirement of CA for technical qualifications in the form of requirement for the construction manager in the implementation of water supply and sanitation.
- Judgment of the Supreme Administrative Court in Brno r. n. 8 Afs 56/2012 – 53 from 27.8.2013 – the court found to be discriminatory requirement of CA for that tenderer has to have the permission from CA under the Waste Act (permit to operate the household waste disposal at the place of of the public contract.
- Judgment of the Supreme Administrative Court in Brno r. n. 1 Afs 69/2012 – 55 from 28.3.2013 – court found discriminatory requirement for ownership of mixing plant or to have signed a preliminary contract with the owner of mixing plant (see also Judgment of the Supreme Administrative Court in Brno r. n. 1 Afs 20/2013 - 47 from 27.6.2013).
• Judgment of the Supreme Administrative Court in Brno r. n. 9 Afs 37/2011 – 82 from 7.12.2011 – disproportionate Technical qualification requirement of 20 years of experience in advocacy in connection with providing "normal" legal services, as was described in the subject of the public contract.

5. Direct (overt) and indirect (covert) discrimination of suppliers by CAs

In connection with the disproportionate requirements of CAs for qualification of tenderers tenderers and jurisprudence refers to the the overt and covert forms of discrimination. About the overt discrimination we are talking when it is approached differently for individuals than to the whole (for example, one tenderer is asked to complete the qualification and the other is excluded). About the covert forms of discrimination we are talking when the CAs does not directly deal with individual differently than with the whole, but provides for such requirements for qualifications that can fulfill only a certain number of suppliers and thus are other tenderers who would otherwise the subject of the public contract realize discriminated.

To these terms has already commented as well the Supreme Administrative Court in Brno in its judgment ref 1 Afs 20/2008 of 5.6.2008, which distinguishes between overt forms as different approach to the individual than the whole and covert covert form of setting such qualification requirements that are disproportionate to the size and complexity of the public procurement.

The cost of processing tenders for public contracts

A survey between SMEs shows that as the second most serious barrier to the possibility of participation in public procurement in the Czech Republic they see the excessive cost of preparation of bids in tenders. In the private sector, communication is much faster more flexible when the time interval between demand and supply is often only a few minutes when as an offer is sufficient one document as an attachment to email messages. In relation to the processing of tenders for public contracts is from the suppliers needed to be done it a number of difficult operations consisting of acquisition of extracts and other documents that increase costs (also labor) to submit such offers. Cost intensity in the processing of tenders thus preventing suppliers from SMEs to submit tenders (bids) for public contracts.

Inappropriately provided partial evaluation criteria

Feedback from representatives of SMEs and decision-making practice of OPC and jurisprudence shows that a common reason for failure to submit a tender is inappropriate
formulation of the evaluation criteria, especially qualitative criteria, that should always express the relationship between use value and price of criteria.

- Decision of OPC r.n. ÚOHS-S198/2012/VZ-7307/2012/520/ABr from 25.5.2012 – discriminatory conditions of partial evaluation criteria "warranty up to 60 months," for which this criterion received 0 points tenderer who offered a longer warranty period, thus better conditions for CA (see Judgment of the Supreme Administrative Court in Brno r. n. 5 Afs 75/2009 from 6.11.2009 on the adequacy of values in job offers).

- Judgment of the Regional Court in Brno r. n. 62 Af 5/2010-58 from 6.10.2011 – indeterminate and inappropriate definition of partial evaluation criteria quantity retraining courses, which could result in a different interpretation of applicants.

- Judgment of the Regional Court in Brno r. n. 62 Ca 43/2009-52 from 16.8.2011 – inappropriate definition of the sub-criterion No. 2, which, according to its meaning "cost reduction program" could and should be associated to the criteria of the bid price.

**Excessive formality of procedures, inappropriate administration**

Suppliers are excluded by CAs for easily removable deficiencies in bids Example, the law requires that after the opening of the envelopes with bids the draft contract must be signed by a person authorized for this act by the tenderer, and if it is not (even if the rest of the bid was absolutely right), this offer must be excluded from further assessment and evaluation. In the case of that it is necessary to add to bid some indication (but not price) there is a risk that any supplement of bid may be considered as inconsistent with the law, because in submitted bids should tenderers not in any way intervene already (except for its explanations and supplementary qualification). Excessive administration from the viewpoint of suppliers is closely related in particular with proving the basic qualification requirements, that consists of the need to procure a range of official documents and in case these are required in the originals disproportionate, burden the tenderers in the completion of their bids.

**Other barriers**

From the respondents suppliers of SMEs came identification of more interesting barriers which these companies perceive as relevant for the opportunity to enter the public procurement market or participate on this market. We could mention two most frequently barriers presented by SMEs participants.
1. Estimated value of public contracts

Some of CAs currently publish contracts with the expected value at the edge of any business margin from their realisation. Communication with suppliers revealed that some SMEs companies do not want to participate in tenders because of their potential margin obtained from the realisation of the contract would be compared to the cost for processing of their bid was negligible. In practice, for example, it happens to be on a contract relating to the IT equipment where there is generally a large number of suppliers are no bids because of extremely "squeezed" expected value.

2. Lack of capacity to participate public contracts

Just two out of the total number of addressed representatives of SMEs indicated that barriers to entry into the public procurement market is their lack of capacity. It means they believe that for public contracts they are not adequately equipped.

Discussion

In the above text are listed and commented the results obtained in the framework of identification of barriers for SMEs preventing them from participation in public procurement in the country.

From the results follow that as the largest barrier regarded as a suppliers of SMEs disproportionate requirements for suppliers from CAs in connection with all qualification requirements (outside the basics qualifications). According to the authors opinion however reasonable qualification requirements have a purpose. The CAs is trying of their establishing to prevent the participation of such suppliers that would ultimately not be able to realize a contract due to lack of knowledge or capacity. CAs should, however, always had to establish such requirements for qualification in relation to the type and complexity of the subject of the contract, not only based on for example estimated value of public contracts, etc. question of determining the adequacy of qualification requirements will be the subject of extensive discussions.

In referring to 'costs of processing bids, which proved to be the second largest barrier for submission of tenders for SMEs, it is possible to recommend the authorities, in connection with proving qualification to use the possibilities of proving just through the affidavit (where legally possible) or to proof qualifications through affordable copies of official documents (contractors should not have to for provide any custom originals of official documents but
always for a period of time would be able to have the originals with them and they should submit only their free copies to CAs. This would both reduce the cost and effort, but ultimately also inappropriate administration relating to the processing of tenders.

In determining the partial evaluation criteria it is needed from CAs to always look for relationship between use value and price criterion. It can not be assigned a high weight of quality criteria that not have such a weight compared to their price. The possibility of determining the quality criteria in the evaluation of quality of the tenders in public procurement has its place because through such criteria it is possible to prefer the offer with higher quality apart of bid with lower quality. The problem is the inability of CAs to define quality criteria right way, and so it is the current trend from CAs to leave the definition of quality criteria and orient their requirements only on the lowest bid price but it is not itself able to distinguish quality.

Excessive formality of the public tenders is caused by some states of the law when intention of the legislature was certainly to prevent any plots related in particular with modifying bids and with preferences for certain suppliers from others etc. It is important that future the law should be able to reflect on what is really serious and incurable defect of bid and when there is a defect easily removable with no-need to exclude such a tenderer This topic could be the subject for further and more detailed investigation.

**Conclusion**

The above text shows that the barriers to entry for SMEs to enter the public procurement market in the Czech Republic undoubtedly exist. Conducted survey showed which barriers consider SMEs as the most serious. The analysis of decision making practice OPC and case law also shown such requirements CAs try to "eliminate" the possibility of SMEs to participate in the competitions. This opportunity is given to them solely by the formulation of law which in some of its provisions the possibility of so-called indirect (covert) discrimination gives. Yet it is SMEs that are registered as taxpayers in this country, and so that does not put their profits outside the Czech Republic, as it is often in the case of large multinational corporations. Another amendment to the Act should therefore focus on the review those provisions of the Act that give CAs the option "in accordance with the law" to discriminate SMEs. In addition, the survey revealed one important fact and it is that a minimum percentage of SMEs consider that the barrier for their possibility to entry the public procurement market is their lack of capacity. Due to the importance of SMEs not only as a major employer but
also the creator of GDP and taxpayer should the legislature but even CAs seek to allow maximum access to SMEs in the public procurement market This can be achieved by eliminating discriminatory and unjustified requirements defined by the both law and also abused by the CAs.

Acknowledgements
This paper was prepared and funded as part of the IGA PEF No. 13/2013 titled "The behavior of the company as a tenderer."

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**Legislation**

Zákon č. 137/2006 Sb., o veřejných zakázkách, ve znění pozdějších předpisů
Směrnice č. 2004/18/ES o koordinaci postupů při zadávání veřejných zakázek na stavební práce, dodávky a služby
Směrnice 2004/17/ES o koordinaci postupů při zadávání zakázek subjekty působícími

**Decision-making practice of OPC**

Decision of OPC r. n. ÚOHS-S356/2010/VZ-17647/2010/530/JWe from 30.11.2010
Decision of OPC r. n.ÚOHS-S667/2012/VZ-4389/2013/511/JPo from 11.3.2013
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Judgment of the Supreme Administrative Court in Brno r. n. 1 Afs 69/2012 – 55 from 28.3.2013
Judgment of the Supreme Administrative Court in Brno r. n. 9 Afs 37/2011 – 82 from 7.12.2011
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Judgement of the Supreme Administrative Court in Brno in its judgment ref 1 Afs 20/2008 of 5.6.2008
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