

By the Judgement № 57-II of 23 December 2022, the Constitutional Court assessed the constitutionality of Articles 432 (item 1), 438 (item 1), 447 (item 5) and 448 (item 4) of the Civil Code of the Russian Federation.

These legal provisions were the subject of consideration insofar as they (in their interrelation) served as basis for deciding upon the issue of the obligation of a person carrying out purchases in accordance with the Federal Law "On the Purchase of Goods, Works, and Services by Certain Types of Legal Entities", for the conclusion of a contract for the sale (supply) of goods, performance of work, provision of services is conducted by competitive bidding, to conclude such a contract in the event of recognition of the bidding as invalid with the sole participant in the bidding unless this issue is otherwise resolved in special legislation.

The contested provisions of the law were found not to be in contravention with the Constitution of the Russian Federation since according to their constitutional and legal meaning and view of systemic connection with the said Federal Law:

the customer (organiser of the auction) is not required to conclude an agreement, in respect of which the right to conclude it is subject to a mandatory auction, with the only participant in the auction in the event of its recognition as invalid due to the absence of other participants in the auction, if the regulation on purchase adopted in accordance with this Federal Law expressly provides that in such case the agreement is not concluded and the auction is held again;

when such a solution to the issue is not provided for in the said document or when arbitrary discretion of the customer (organiser of the auction) is allowed in the matter of concluding such an agreement, recognition of auction as invalid on the said basis does not entail a refusal to conclude an agreement with the sole participant in the auction if there are no objective obstacles to concluding an agreement with this participant (the customer has the opportunity to conclude an agreement with a sole participant whose offer is competitive, complies with the purchase documentation, and it in turn does not limit the conditions for free competition).