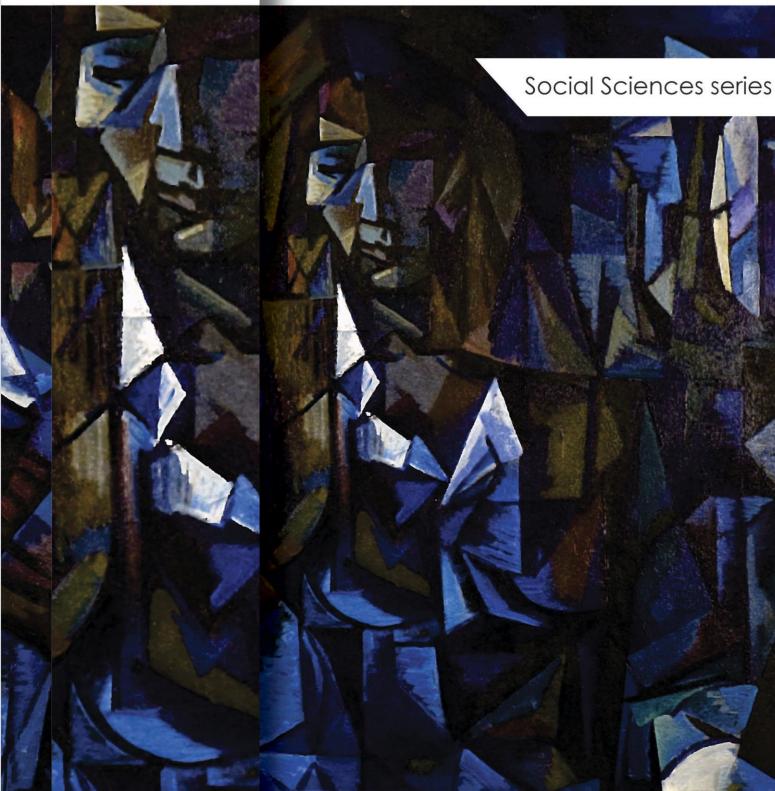
INTERNATIONAL SCIENCE REVIEWS

AIU





www.aiu.kz

ISSN: 2707-4962



International Science Reviews Social Sciences series

Published since 2020

No. 4 (2) / 2021

Nur-Sultan

EDITOR-IN-CHIEF: Doctor of Historical Sciences, Professor Shaikhutdinov M.Y.

DEPUTY EDITOR-IN-CHIEF

Doctor of Jurisprudence, Professor Amandykova S.K.

EDITORIAL BOARD:

Irsaliyev S. A.	-	Candidate of Agricultural Sciences, President AIU, (Kazakhstan)							
Sarsenbay N. A.	-	Candidate of Economic Sciences, (Kazakhstan)							
Somzhurek B.Zh.	-	Candidate of Historical Sciences, Professor (Kazakhstan)							
Amandykova S.K.	-	Doctor of Jurisprudence, Professor (Kazakhstan)							
Kazhyken M. Z.	-	Doctor of Economic Sciences, (Kazakhstan)							
Toxanova A.N.	-	Doctor of Economic Sciences, (Kazakhstan)							
Akhmadiyeva	-	Candidate of Pedagogical Sciences, Associate professor							
Zh.K.		(Kazakhstan)							
Laumulin M. T.	-	Doctor of Political Sciences, (Kazakhstan)							
Orlova O.S.	-	Doctor of Pedagogical Sciences, Professor (Russia)							
Jacek Zaleśny	-	Doctor of Jurisprudence, Professor (Poland)							
Francisco Javier	-	Dr. hab., Professor (Spain)							
Diaz Revorio									
László Károly	-	PhD (The Netherlands)							
Marácz									
Verbitskiy A.A.	-	Doctor of Pedagogy, Academician of the Russian Academy of Education (Russia)							

Editorial address: 8, Kabanbay Batyr avenue, of.316, Nur-Sultan, Kazakhstan, 010000 Tel.: (7172) 24-18-52 (ext. 316) E-mail: social-sciences@aiu.kz

International Science Reviews Social Sciences series

Owner: Astana International University Periodicity: quarterly Circulation: 500 copies

«INTERNATIONAL SCIENCE REVIEWS» Social Sciences Series No 4

МАЗМҰНЫ

Секция ҚҰҚЫҚ

КОНСТИТУЦИЯЛЫҚ ҚҰҚЫҚ

Акопян Л.А.

САЙЛАУ ҚҰҚЫҚТАРЫН ҚОРҒАУДЫҢ КЕЙБІР МӘСЕЛЕЛЕРІ.....11

АЗАМАТТЫҚ ҚҰҚЫҚ

Больбат П.Н.

Анферова О.А.

Перепадя О.А.

КОРПОРАТИВТІК ҚҰҚЫҚТАРДЫ ҚОРҒАУ: БІРҚАТАР МӘСЕЛЕЛЕРІ..38

Станкевич Г.В., Вильгоненко И.М.

ЗАҢДЫ ТҰЛҒАЛАРДЫҢ КЕЙБІР САНАТТАРЫНЫҢ ТӨЛЕМ ҚАБІЛЕТСІЗДІГІН ҚҰҚЫҚТЫҚ РЕТТЕУДІҢ ЕРЕКШЕЛІКТЕРІ......43

ХАЛЫҚАРАЛЫҚ ҚҰҚЫҚ

Бабаян Р.А.

ЖАС ІЗДЕНУШІЛЕР

Байболова М.Б.

ҚАЗАҚСТАН РЕСПУБЛИКАСЫНДА ПАНДЕМИЯ КЕЗЕҢІНДЕ
ПАЙДАЛАНЫЛАТЫН КЕЙБІР ҰҒЫМДАРДЫ ЗАҢНАМАЛЫҚ
АЙҚЫНДАУ ТУРАЛЫ МӘСЕЛЕ ТУРАЛЫ
Корабаева Ж.С.
МЕДИАЦИЯ АДАМ ҚҰҚЫҚТАРЫН ҚОРҒАУДЫҢ ИННОВАЦИЯЛЫҚ
НЫСАНЫ РЕТІНДЕ
Үдербай С.С.
ЖӘБІРЛЕНУШІЛЕРГЕ ӨТЕМАҚЫ ӨНДІРУДІ МӘЖБҮРЛЕП ОРЫНДАТУ
МӘСЕЛЕЛЕРІ
Бекишева М.О.
КӘМЕЛЕТКЕ ТОЛМАҒАНДАРҒА ЖЫНЫСТЫҚ ЗОРЛЫҚ-ЗОМБЫЛЫҚ
ЖАСАҒАНЫ ҮШІН ҚОСЫМША ЖАЗА РЕТІНДЕ АТА-АНА

«INTERNATIONAL SCIENCE REVIEWS» Social Sciences Series No 4

СОДЕРЖАНИЕ

Секция ПРАВО

КОНСТИТУЦИОННОЕ ПРАВО

Акопян Л.А.

НЕКОТОРЫЕ ПРОБЛЕМЫ ЗАЩИТЫ ИЗБИРАТЕЛЬНЫХ ПРАВ......11

ГРАЖДАНСКОЕ ПРАВО

Больбат П.Н.

Анферова О.А.

Перепадя О.А.

Станкевич Г.В., Вильгоненко И.М.

ОСОБЕННОСТИ	mmbobor		РЕГУЛИРОВАНИЯ
НЕСОСТОЯТЕЛЬНОСТИ	ОТДЕЛЬНЫХ	КАТЕГОРИЙ	ЮРИДИЧЕСКИХ
ЛИЦ			

МЕЖДУНАРОДНОЕ ПРАВО

Бабаян Р.А.

МОЛОДЫЕ УЧЕНЫЕ

Байболова М.Б.

К ВОПРОСУ О ЗАКОНОДАТЕЛЬНОМ ОПРЕДЕЛЕНИИ НЕКОТОРЫХ
ПОНЯТИЙ, ИСПОЛЬЗУЕМЫХ В ПЕРИОД ПАНДЕМИИ В РЕСПУБЛИКЕ
KA3AXCTAH

<u>Корабаева Ж.С.</u>

МЕДИАЦИЯ	КАК	ИННОВАЦИОННАЯ	ΦΟΡΜΑ	ЗАЩИТЫ	ПРАВ
ЧЕЛОВЕКА				•••••••••••••••••	66

<u>Үдербай С.С.</u>

ВОПРОСЫ	ПРИНУДИТЕЛЬНОГО	ИСПОЛНЕНИЯ	КОМПЕНСАЦИИ
ΠΟΤΕΡΠΕΒΙ	ШИМ		71

Бекишева М.О.

ЛИШЕНИЕ	РОДІ	ИТЕЛЬСКИХ	ПРАВ	КАК	ДО	ПО	ЛНИТЕЛ	ЬНОЕ
НАКАЗАНИЕ	3A	ПОЛОВЫЕ	ПОСЯГА	ТЕЛЬСТВ	А	В	ОТНОШІ	ЕНИИ
НЕСОВЕРШЕІ	ННОЈ	ІЕТНИХ			•••••	•••••		78

«INTERNATIONAL SCIENCE REVIEWS» Social Sciences Series No 4

CONTENT

Section LAW

CONSTITUTIONAL LAW

Hakobyan L.O. SOME PROBLEMS OF ELECTORAL RIGHTS PROTECTION......11

CIVIL LAW

Bolbat P.N.

THE HISTORY	OF THE	FORMATION	OF THE	INSTITUTE OF	CIVIL
REPRESENTATI	ON				21

Anferova O.A.

Perepadya O.A.

INTERNATIONAL LAW

Babayan R.A.

YOUNG RESEARCHES

Baybolova M.B.

ON THE ISSUE OF LEGISLATIVE DEFINITION OF SOME CONCEPTS USED DURING THE PANDEMIC IN THE REPUBLIC OF KAZAKHSTAN...58

Korabayeva Zh.S.

Uderbay S.S.

ISSUES OF ENFORCEMENT OF COMPENSATION TO VICTIMS......71

Bekysheva M.O.

OTHER ABILITIES TO CONCLUDE DEALS AT AUCTIONS

Anferova O.A.

Associate Professor of the Department of Civil Law and Process of PSU, Pyatigorsk elenushka1996anferova@mail.ru

Abstract: the state considers the legal regulation of the order for the conclusion of a transaction at auction. The specificity of this regulation is analyzed. It is stipulated that the Internet is included in almost all spheres of common life. The sphere of compulsory use of judicial postings and other executive documents is also not an exception. Millions of people around the world turn to the Internet every day for the entire transaction of a particular product. This fact is considered as a hairstyle for the development of a new progressive form of enforcement of arrested immunity in enforcement proceedings - the sale of tenders in electronic form. Since participation in them is possible from your favorite point in the world where there is Internet access.

Keywords: transaction, offer, bidding, electronic auction, rental

The legal regulation of the order for the conclusion of a transaction at auction depends on who is applying for its conclusion. So, if an offer to conclude a deal that will open up all the necessary offers made to a specific entity that can potentially become a storied transaction, this acceptance of the latter is worthy to consider the transaction concluded (when seducing the form established by law).

If several or an unlimited number of persons claim or can claim the right to conclude a contract, then due to the emergence of a kind of competition between them, a mechanism for choosing the optimal counterparty is necessary. For this purpose, the procedure for concluding an agreement at the auction serves, where the person recognized as their winner undertakes to conclude an agreement with the organizer of the auction, thereby "removing" the issue of choosing a counterparty.

Nowadays, the Internet has become practical in all spheres of common life. The sphere of compulsory use of judicial postings and other executive documents is also not an exception. Millions of people around the world turn to the Internet every day for the entire transaction of a particular product. This fact has become one of the reasons for the development of a new progressive form of enforcement of the debtor's arrested immunity in enforcement proceedings - the sale of auctions in electronic form (further-electronic auctions). After all, a part in them is possible from your favorite point in the world where there is Internet access.

There are several types of procurement (electronic bidding):

- Request for quotations;
- Electronic auction;
- Competition.

Request for quotations is a more simplified form of procurement. The winner in this case is the bidder who offered a lower price. The notification must contain the minimum number of requirements: this is the subject of purchase or provision of services, as well as the form of payment, and the availability of delivery of goods, the absence of a person in the register of unscrupulous suppliers (RNP). In essence, an application can be submitted by an electronic bidder without the application of various certificates, licenses and other related legal documents. This method of electronic bidding is carried out for the purchase of one type of product: goods, works / services, the initial price of which does not exceed 500 thousand rubles. It should be said that the price offers are submitted by the participants once in paper or electronic form (signed with the help of EDS) and are not subject to change. Based on the results of the quotation commission, a special final protocol is created. This document is located on the electronic platform. If the participant wins according to the results of this protocol (submitted a lower price), then the customer must contact him independently and provide a contract for signing.

Electronic auction – electronic auctions that are held in an open or closed form on a certain electronic trading platform that the customer chooses. It should be noted that if the customer is state-owned, then the electronic platform on which the tender is held will be one of the five federal ones. It should be said that in an electronic auction there is no limit on the initial price of the contract and the number of price offers submitted. Such price offers are submitted as at a regular auction - using the means of an electronic platform. The winner in this type of electronic bidding is the entity that offered a lower amount. Thus, the main criterion here, again, remains the price. There are increased demands on the participants. Thus, the customer may require each person to have licenses and certificates for products. A larger percentage of this type of electronic bidding is tenders for construction.

In addition, the tender is a form of procurement in which the proposals of the subjects are evaluated collectively, and the price offer is only one of the criteria for selecting the winner. With the help of such an open competition, tenders for the design of exhibitions or tenders for development are carried out in electronic form.

Thus, electronic auctions are present only in an electronic auction, where participants submit their price offers several times.

An interesting fact is that, since 2011, the Bailiffs' Service has been selling seized property, including through electronic bidding. It seems that the application of the electronic bidding procedure in enforcement proceedings allows:

- reduce the cost of the working time of the bailiff;

- reduce the costs (expenses) for the execution of the enforcement document (relocation, storage of property; expenses for the travel of the bailiff to the place of execution of enforcement actions; expenses for the commission of the trade organization for the sale of the debtor's property and other expenses);

- to put up for sale various immunity (except for immunity, in alienation, which is a legislative institution in the order of implementation (payment)) independent of its quantity, vision and cost;

- to reach out to the landscapes of the region, significantly expand the market for sales and the range of participants in electronic bidding;

- minimize the amount of unrealized immunity;

- to exclude interference in the process of electronic trading by an official or other person, not provided for by law, thereby ensuring maximum breathability of their conduct.

It seems that in the near future, a platform for the enforcement of debt immunity in electronic form will begin to function on the Internet portal (website) of the system of enforcement bodies of judicial household and other executive documents.

It is an indisputable fact that the success of enforcement proceedings in everything depends on the effective implementation of immunity, what the opinion is drawn to in the process of compulsory execution of a judicial formation or other enforcement document.

Electronic bidding in enforcement proceedings is a fundamentally new and progressive mechanism for the implementation of immunity within the framework of enforcement proceedings, which can significantly increase the effectiveness of the work carried out by bailiffs on mutual debt.

In addition, if you look at the bidding procedure as a mechanism, the final stage, which is considered to be the execution of the protocol based on their results, this is an obvious inconsistency of joining the protocol of the transaction force.

The fact that the legislator distinguishes the auction item which occurs immunity, including immune rights, and the right to enter into transactions and

satisfactorily the division to impose various legal consequences of the fact of appointment of the person who won the auction:

- in the first case, the party who won the auction, and the bid to sign on the day of the auction (tender) Protocol, which has the force of transactions;

- if only the right to conclude a transaction is played out under the terms of the auction, such an agreement must be signed by the parties no later than twenty days or another deadline specified in the execution after the completion of the auction and the execution of the protocol, unless otherwise provided by legislative acts (honor of the first and second Paragraphs 5 of Article 418 of the Civil Code of the Russian Federation).

Where do questions arise in practice, the solution of which in law enforcement practice is found in the broad interpretation of Clause 5 of Article 418 of the Civil Code, so if it comes to complex technological equipment that requires software installation, personnel training, etc., This is when it is provided at auctions and when drawing up a protocol, which is sufficient for the merit of the transaction, it is not possible to agree on conditions that will regulate the procedure for installing software, training personnel, etc.

In this regard, in appropriate situations, the parties, in addition to the protocol, since this is not prohibited by paragraph 5 of Article 418 of the Civil Code, conclude a transaction in a simple written form, in which the conditions necessary for them are agreed. If the object of the auction is real estate, then the winner of the auction and the organizer from the point of view of the Civil Code of the Russian Federation can limit themselves to signing a protocol that will have the force of the transaction, in any case in force the imperatives of the norms o the form of the contract for the sale of real estate and o the requirement of state registration of the contract (Articles 521, 522 of the Civil Code), the parties are forced, along with the protocol on the results of the auction, to formalize relations according to the law, that is, to conclude a contract in writing by drawing up a single document signed by the parties, and register it.

Thus, the mechanism for concluding the contract - bidding - is completed, because a protocol has been drawn up that records its results, and a contract is concluded between the person recognized as the winner and the organizer of the auction - a legal fact on the basis of which legal relations arise from the contract of sale.

The constitutive feature of bidding is competitiveness, as a result of which bidding and other "competitive" methods of concluding a contract are essentially "competitive procedures for concluding alternative counterparties that compete (compete, compete) with each other for the right to become a party (counterparty) in the same contract."

The category of "competitive methods" in the national legislation is used for the first time in special regulations governing the procedure for conducting purchases at own expense, where auctions and tenders can be applied for the purposes of concluding a contract, which, within the meaning of the legislation, are classified as competitive procedures.

However, despite the introduction of a new term, the legislator does not disclose the content of competitive procedures and does not disclose their list.

For example, the UNCITRAL Model Law on Public Procurement defines procurement methods, which include: open bidding; bidding with limited participation; request for quotations; request for proposals without negotiations; two-stage bidding; request for proposals with dialogue; request for proposals with consecutive negotiations; competitive negotiations; electronic reverse auction, single-source procurement, framework agreement (art. 27).

In the above-mentioned Model Law, each method is separately regulated, regardless of whether it is competitive or non-competitive.

It is generally accepted that a contract can be concluded using competitive and non-competitive methods.

Meanwhile, from our point of view, the classification of methods of concluding contracts into competitive and non-competitive is rather conditional, since some authors refer to competitive methods as bidding, non-competitive methods are considered negotiations of the parties, including through the exchange of an offer and acceptance, the conclusion of a contract without fail and as a result of accession. Others, on the contrary, consider the negotiation procedure to be competitive.

Taking into account the above, it seems that it is tactically incorrect to introduce new categories (competitive procedures) into national legislation, if this does not affect the nature of the regulation of relations.

Such a step by the legislator would be justified if the violation of competition or restriction of competition in competitive procedures could be the subject of a dispute initiated by other participants whose rights to equal conditions at auctions, in procurement procedures are violated.

But then another question would arise: about the criteria for violating the right to equal conditions for bidding, which is also not in the legislation on procurement at own expense.

In this regard, it is logical to determine the criteria for classifying certain procedures for concluding contracts as competitive and to establish mechanisms for protecting the rights of participants in case of violation of competition (competition), a also, the legal consequences of the violation, for example, the recognition of the auction as invalid on this basis.

Special attention during the bidding process deserves the ratio of bidding as the procedure for concluding a contract and the conditions for exercising the pre-emptive right to conclude a contract.

The competitive nature of the bidding suggests that all their participants should be in an equal position and there should be no advantages for some of them.

Otherwise, the established advantages devalue the bidding.

The institution of pre-emptive right and bidding should not and cannot be combined, since during the bidding process any pre-emptive right must be "blocked" and can be implemented either before the bidding or after.

However, it is considered optimal to establish a "ban on bidding before the exercise of the pre-emptive right."

An important point that "insures" the auction participants from the possible exercise of the pre-emptive right by the former tenant to conclude a contract is that the winner of the auction has the right to claim damages related to participation in the auction, if information about the presence of a person with a pre-emptive right to conclude a lease agreement was not included in the notice of their conduct.

However, the absence of such information in the notice of the auction is not a reason for invalidating the auction.

From the above, some diminution of the principle of equality of bidders is obvious, but a preventive mechanism has been created to protect the rights of other participants in the form of mandatory indication in the notice of bidding of information about the holders of the pre-emptive right.

More effective from the point of view of protecting the rights of subjects with a preemptive right is to provide them with a legal opportunity to exercise a preemptive

right before bidding, and if they have not exercised this right, it is possible to hold auctions where equality of persons participating in them will be ensured and the risk of exercising a preemptive right is excluded.

If, for any objective reasons, it is nevertheless necessary to establish advantages, then the relevant relations should be specifically regulated. For example, the legislation on public procurement, which is carried out through auctions, tenders and a number of other procedures, contains rules on the so-called preferential amendment.

The mechanism of action of the preferential amendment, for example, for electronic auctions is as follows: during the bidding on the electronic trading platform, the current bid and the corresponding bid, increased by 15 or 25 percent, respectively, are displayed simultaneously.

If the winning participant chooses a participant applying a preferential amendment, the public procurement contract with such a participant is concluded: during tenders, the procedure for requesting price proposals, the procedure for issuing a competitive list - at the bid price of such a participant, during electronic auctions - at the price of the last bid of such a participant, increased respectively by 15 or 25 percent when public procurement is carried out on the territory of the Russian Federation.

Conclusion:

The bidding rules cannot and should not depersonalize the rules established for other methods of concluding a contract. Otherwise, this leads to infringement of the rights of citizens and legal entities in terms of discretion when choosing their counterparty.

There is nothing more than an encroachment on one of the fundamental principles of civil legislation - the principle of freedom of contract.

This freedom lies not only in the independent choice of who to conclude a contract with, but also in the independent determination of the algorithm of the procedure for choosing this person.

The use of bidding is possible at the conclusion of any contracts, the execution of which at the auction is compatible with their essence.

It is necessary to refute the widespread opinion in legal science about the unsuitability of bidding for the conclusion of a publishing agreement, a donation agreement, a barter agreement, a joint activity agreement. Attempts to accurately identify models of contracts that can or cannot be concluded at auction are futile.

The type of contract itself does not matter for the choice of the method of its conclusion.

Bidding is compatible with the essence of those contracts in the process of concluding which there is a place of competition, but not in the sense that is given to this concept in the antimonopoly legislation, but in a narrower sense - as a competition and rivalry between two subjects in a particular competition, i.e. in bidding.

It is generally accepted that a contract can be concluded using competitive and non-competitive methods.

Meanwhile, from our point of view, the classification of methods of concluding contracts into competitive and non-competitive is rather conditional, since some authors refer to competitive methods as bidding, non-competitive methods are considered negotiations of the parties, including through the exchange of an offer and acceptance, the conclusion of a contract without fail and as a result of accession.

Others, on the contrary, consider the negotiation procedure to be competitive.

Literature

- Belokrylova, O. S. Institutional modernization of the budget orders market. Principles, tools, directions / O.S. Belokrylova, S.V. Voropaeva. - M.: Assistance -XXI century, 2020. - P.23
- Rykhtikova, N. A. Public procurement: legislative framework, implementation mechanisms, risk-oriented management technology / N. A. Rykhtikova - M.: Forum, 2019. - p.85.
- 3. Tasalov, F. A. Contract system in the field of public procurement in Russia and the USA. Comparative legal research / F.A. Tasalov. M.: Prospect, 2019. P.23.
- 4. Shvager, D. Exchange secrets. Technical analysis / D. Schwager. M.: Rusich, 2020. p.84.
- 5. Yusupova, G. F. Is an auction a sufficient condition for competition? Collusion in the public procurement market: monogr. / G.F. Yusupova. M.: Synergy, 2018. p.97.

БӨЛЕКШЕ САУДА БОЙЫНША МӘМІЛЕЛЕР ЖАСАСУДЫҢ ӨЗГЕШЕ ТӘСІЛДЕРІ

Түйін: Мақалада сауда-саттық туралы шарт жасасу тәртібін құқықтық реттеу қарастырылған. Интернет қоғам өмірінің барлық салаларына іс жүзінде еніп кеткені қарастырылған. Сот бұйрықтарын және басқа да атқару құжаттарын орындау мәселелері зерделенген. Дүние жүзіндегі миллиондаған адамдар күн сайын қандай да бір өнімді сатып алу мақсатында Интернетке жүгінеді. Бұл факт меншік иесінің жұмыстан шығарылған мүлкін электр энергиясын өндіруге мәжбүрлеп енгізудің жаңа прогрессивті формасының дамуының себебі ретінде қарастырылады. Өйткені оларға қатысу Интернетке қол жетімді әлемнің кез келген нүктесінен мүмкін екендігі, осы саладағы құқықтық қатынастар талдау жасалған.

Кілт сөздер: келісім-шарт, ұсыныс, сауда-саттық, электрондық аукцион, сатып алулар.

ИНЫЕ СПОСОБЫ ЗАКЛЮЧЕНИЯ СДЕЛОК НА ТОРГАХ

Аннотация: В статье рассматривается правовая регламентация порядка заключения договора на торгах. Анализируется специфичность данного регламентирования. Оговаривается, что Интернет внедрился практически во все сферы общественной жизни. Исключение также не составляет и сфера принудительного исполнения судебных постановлений и иных исполнительных документов. Миллионы людей во всем мире ежедневно обращаются к Интернету с целью приобретения того или иного товара. Этот факт рассматривается как причина развития новой прогрессивной формы принудительной реализации арестованного имущества должника в исполнительном производстве - проведения торгов в электронной форме. Так как участие в них возможно с любой точки мира, где есть доступ в Интернет.

Ключевые слова: договор, оферта, торги, электронный аукцион, закупки.