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Summary of the doctoral dissertation:

Protection of the Public Interest in Public Procurement Law

The author's motivation of the dissertation topic is the importance of public procurement for the efficient implementation of public tasks by the State and meeting social needs. Expenditures on public procurement in Poland, due to their value (in 2023 they constituted approximately 17% of GDP), also have a significant impact on the functioning of economic entities on the market. In addition, the category of public interest is an extremely important one due to its general nature, common use in legal language, and since it justifies the legislator's interference in the sphere of citizens' freedoms, including the restriction of the right of economic entities to access public procurement on equal terms.

The primary objective of the work is to attempt to identify the content of the public interest in public procurement, to determine the conditions justifying the restriction of its implementation and to assess the effectiveness of legal guarantees adopted for its protection. Achieving this goal required adopting one basic assumption (thesis) that legal norms of a universal, absolute and unambiguous nature, which regulate public procurement, are the most effective method of realizing the public interest proper to public procurement. The adopted legal norms express values, the protection of which is the purpose of legal regulation, which is a necessary condition for recognizing them as the basis of the public interest. Detailed legal regulations of public procurement law also determine the limits of protection of values included in legal norms, and therefore the limits of protection of the public interest. The regulations of the Public Procurement Law were assessed in order to determine whether the limits of the public interest protection were defined properly. The starting point for such an assessment was to determine the conditions under which it is possible to limit the implementation of the public interest in public procurement resulting from the constitutional principles of freedom of economic activity and free competition, the principles of the EU internal market and the norms of the EU directives regulating the award of public procurement contracts.

The dissertation consists of an introduction, six chapters and final conclusions. The basic goal of the first chapter is to analyse the meaning of the concept of public interest as adopted in the theory of law in order to adopt an understanding of the concept of public interest for the needs of the dissertation. The issue of individual interest, which in the process of awarding public contracts is in a constant relationship with the public interest, is also raised. It is particularly important to establish that the public interest cannot be automatically identified with the interest of a public administration entity. The interest expressed in public contracts by the administrative apparatus may not have much in common with the public interest. These issues are of a nodal nature - they are inextricably linked to the rest of the work and are crucial for a coherent presentation of the research and its results.

The next chapter is devoted to the analysis of the principles of awarding contracts, which are key to determining the content of the public interest included in the regulations of public procurement law. The analysis covered individual principles of awarding public contracts adopted in public procurement law in order to determine the values they serve, their mutual relationship and to

determine the area of conflict of identified interests. It was established that the values of public procurement law constituting the basis of the public interest are the opening of public contracts to competition between economic entities and the efficiency of public contracts.

The third chapter of this thesis is devoted to the analysis of the relationship between the Public Procurement and the principles of constitutional law and the European Union law, in order to determine the legal premises justifying the restrictions on the implementation of the public interest in the Public Procurement Law. These findings are crucial for the considerations and assessment conducted in the next two chapters of the work concerning the circumstances and scope of legal regulations restricting the implementation of the public interest resulting from the general principles of public procurement. First of all, it was established that the exclusion of the obligation to apply the procedures of the Public Procurement Law, the application of which constitutes a legal guarantee of the protection of the public interest, may be made only due to an important public interest interpreted taking into account the Constitution of the Republic of Poland and EU law.

The fourth chapter of the work concerns the scope of the exclusion of the obligation to apply legal regulations concerning public procurement. This assessment was made taking into account the legal criteria adopted in the previous chapter of the work justifying the exclusion of the public interest in public procurement. The research has shown that the scope of exclusions from the obligation to apply the Public Procurement Law does not guarantee proper protection of the public interest.

Chapter five analyses the circumstances justifying the exclusion of the obligation to apply procedures involving a public invitation to economic entities to apply for a public contract, i.e. the use of the negotiated procurement procedure without the publication and the single-source procurement procedure. An important element of these considerations is the issue of the scope of the adopted exclusions and their assessment. Research has shown that despite significant progress in limiting legal regulations enabling the broad application of the above-mentioned procedures, there is still room for adopting legal regulations aimed at more effective protection of the public interest.

In the last chapter (sixth), the standards regulating the procedure for awarding a public contract were analysed in order to identify the values that justify the limitation of the openness of public procurement to competition. The limits of protection of the public interest were assessed and analysed whether they are set appropriately. The research has shown that legal regulations lead to excessive restriction of competition. Moreover, legal regulations aimed at obtaining the quality of the subject of the contract do not clearly define the limits of realisation of this value and the permissible restriction of competition.

The final conclusions confirmed the adopted thesis of the work, while in relation to the adopted research hypotheses, the conducted research showed the need for changes in legal regulations that would constitute more effective legal guarantees of protection of the public interest in the process of awarding and implementing public procurement. At the same time, the adopted changes would contribute to more appropriate protection of the individual interest of economic entities in accessing public procurement.



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