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Summary of the doctoral dissertation

„The situation of the procurer and the contractor in a construction contract in terms of the harmonization of public procurement law in Poland and Spain”

I wrote my doctoral thesis entitled "The situation of the procurer and the contractor in a construction contract in terms of the harmonization of public procurement law in Poland and Spain" under the supervision of . prof. dr hab. Tadeusz Kocowski.

The dissertation is devoted to the issues of the parties to the public procurement and their impact on the shaping of the contract for construction works in connection with the harmonization of the law of the Member States of the European Union, consisting in the implementation of EU directives, in particular the so-called Classical¹, Sector², Concession³ and Appeal⁴ Directives to Polish and Spanish public procurement law⁵.

The situation (position) of the parties to a public works contract is an issue on the border of two areas of civil and public economic (administrative, economic) law, i.e. the issue of the freedom to shape essential provisions of a contract by the parties to a public procurement and

¹ Directive 2014/24 / EU of February 26, 2014 on public procurement, repealing Directive 2004/18 / EC (OJ L 94, p. 65).

² Directive 2014/25 / EU of 26 February 2014 on procurement by entities operating in the water, energy, transport and postal services sectors, and repealing Directive 2004/17 / EC (OJ L 94, p. 243).

³ Directive 2014/23 / EU of February 26, 2014 on the award of concessions (Journal of Laws UE L 94, p. 1).

⁴ Council Directive 89/665 / EEC of 21 December 1989 on the coordination of the laws, regulations and administrative provisions relating to the application of review procedures to the award of public supply and works contracts (OJ L 395, p. 33-35).

⁵ In Poland, the applicable regulation is the Act of September 11, 2019 - Public Procurement Law (i.e. Journal of Laws of 2021, item 1129, as amended), and in Spain the Act of November 8, 2017 - Ley 9 / 2017, de 8 de noviembre, de Contratos del Sector Público, por la que se transponen al ordenamiento jurídico español las Directivas del Parlamento Europeo y del Consejo 2014/23 / UE y 2014/24 / UE, de 26 de febrero de 2014, BOE, no. 272.

the protection of their interests, where, by definition, the procurer represents the public interest, and the contractor acts in his individual scope.

The main research objective, related to the issues discussed above, was to analyze the legal situation of the parties to public procurement in the Polish and Spanish public procurement law in the context of their impact on the shaping of the contract for construction works and the protection of their interests. As a result of the research, I found that the legal situation of a contractor for construction works in Spanish contracts is more favorable than in Polish ones, because the objective scope of protection of the interest of an individual contractor for construction works and the scope of contractor appeals against contractual provisions in Spanish public procurement law is much wider than in Polish law.

The research also revealed that the procurer's situation is influenced by the protection of the public interest related to the Spanish registers of construction works contractors. Contractors entered into them have appropriate experience and the potential to guarantee the proper performance of the contract and maintain its durability, which has a positive effect on the protection of the public interest and strengthening the position of the procurer. The conducted research also allowed to confirm the research hypotheses put forward at the beginning of the dissertation. In the Polish public procurement system, the legal situation of the procurer, at the stage of the procedure of selecting a contractor for construction works, is better than that of a contractor for construction works due to the limited scope of appeals of the contractor against contractual provisions. On the other hand, in the Spanish system, the situation is similar to the balance between the parties to a public works contract, mainly due to the possibility of contractor appeals against virtually all contractual provisions, and the protection of the broadly understood interest of an individual contractor.

Another very important research goal of the dissertation was to determine the degree of harmonization of Polish and Spanish public procurement law, in connection with the implementation of EU directives, in relation to the situation of the parties to the contract for construction works. The legal doctrine indicates that there are two levels of harmonization of the law of the Member States of the European Union - partial and complete harmonization. Research has shown that the complete harmonization of the Polish and Spanish public procurement law took place, *inter alia*, in the area of governing law: the concept of construction works, preliminary market consultations and in regulations regarding significant changes to the contract at the stage of its implementation. On the other hand, partial harmonization took place mainly in the areas of law governing: the scope of protection of the interest of an individual

contractor, the scope of contractor's appeals against contractual provisions, the scope of public law entities as well as public registers of approved contractors.

Taking into account the position of the parties to the public procurement and the degree of harmonization of the Polish and Spanish public procurement law, it seems that the main objectives of the hearing have been achieved. To achieve these goals, I applied the following methods standardly accepted in legal research: dogmatic, empirical, comparative and historical-legal. Noteworthy is the legal-comparative method, the wide application of which allowed to test research hypotheses and achieve the objectives of the dissertation. It was used, inter alia, to examine the differences and similarities in the implementation of EU directives between Polish and Spanish public procurement law. Using this method, the areas of law in which there was complete and partial harmonization were examined. The hypothesis was also confirmed - that the Polish and Spanish legal systems have been brought closer together in terms of the situation of the parties to a public works contract in connection with the implementation of EU directives.

In connection with the conducted research, I developed two main conclusions de lege ferenda. Firstly, I proposed legislative solutions consisting in extending the application of the proportionality principle to shaping the content of the contract, and secondly, the transfer of proven Spanish legal solutions regarding the registers of approved contractors to classic contracts governed by the provisions of Polish public procurement law.

These solutions may contribute to a greater harmonization of the Polish and Spanish public procurement law, equalizing the situation of the parties to a public works contract, which may be associated with increasing the attractiveness of Polish public procurement among contractors for construction works. The proposed legal solutions concerning the registers of approved contractors, it seems that they may also strengthen the protection of the public interest in maintaining the durability of the construction works contract and contribute to the achievement of its social and economic goal.


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