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Summary of doctoral dissertation
“The rule of equal treatment applied at the stage of
subjective qualification of the contractors in the public
procurement proceeding”

The main exploratory aim of my doctoral dissertation has been analysis of manifestations and degree of realization of the equal treatment rule along with the rules which are strictly related thereto, at one of the stages of public procurement proceeding – subjective qualification of the contractors. Ensuring the implementation of the given rule at this stage of public procurement proceeding is of key importance for protection of competition on public procurement market, as it determines the possibility of applying for procurement contract by the entities capable of executing it.

Public procurement law, as a special law of public administration, is subject to public-law rules, including the rule of equal treatment defined under article 32 paragraph 1 of the Constitution of Polish Republic and the rule of equal treatment defined under article 16 item 1 of Public Procurement Law Act (“PPL”). The given rule has been subject to analysis from perspective of setting out provisions of PPL (“the equality in law”) as well as applying these provisions (“the equality against law”). The indirect problem subjected to research has been analysis of execution of the rules related to equal treatment rule and their mutual relation. Primary aim of research has also been determining developmental directions of legislation influenced by the equal treatment rule.

In order to conduct research properly, I have used legal-dogmatic method, supplemented by historical-legal method.

I've developed following conclusions within the framework of doctoral research. It has been established, that one of developmental directions is providing for reality of conditions for participation in the proceeding, i.e. elimination of phenomenon of only formal fulfilment of these conditions. Another noticeable direction is realisation of equal treatment rule in the increasing extent, what is expressed in detailed principles elaborated by jurisprudence presented in dissertation, which explain and develop the substance of this rule in respect to conditions for participation. Further direction of legislative amendments providing for realisation of equal treatment rule, noticeable in applying grounds for exclusion, is mitigation of rigour existing to date regarding subjective qualification, through introducing self-cleaning institution, the roots of which are proportionality and equal treatment rules.

The findings of the dissertation show, that the equal treatment rule in relation to conditions for participation expresses itself in the specific elements constituting the manifestation thereof under the provisions of subjective qualification, especially in the requirement of reality of fulfilment of the conditions, proportionality of them as well as in the fact of strict relation to protection of competition rule. In order to provide for fulfilment of the above objectives, it is necessary to examine, whether the entities possessing the relevant competences/resources, will dispose of them also at the stage of executing the procurement contract. Otherwise, it comes to unjustified distinction between the contractors.

In order to come to the above conclusions, it has been necessary to find the area of comparison enabling the answer to question, whether in given situations the contractors possess common feature justifying equal treatment of them. It has been determined that as this common feature should be perceived, with respect to conditions for participation, the objective capability to perform specific public procurement contract. Such a capability relates to the size, value, duration, etc. and other specific features of given subject of the procurement contract. Therefore, the class of similar individuals, which should be treated equally, constitute entities acting on the market of given goods or services, which are, from objective perspective, capable of performing it. In case of grounds for exclusion, as a common feature has been considered reliability, which should characterize potential participants of public procurement market, whereby as a class of entities subject to equal treatment should be perceived all participants of public procurement market.

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