ZAŁĄCZNIK NR 4 DO WNIOSKU

Warsaw, 18th March 2019

Włodzimierz Dzierżanowski PhD
Department of Administrative Law
Lazarski University in Warsaw

Academic Achievements

I. Diplomas, academic degrees with the name of the place and year of obtaining thereof and the title of the PhD dissertation.

The PhD in law with honours awarded by virtue of the Resolution of the Council of the Faculty of Law and Administration of the Lazarski University of 18 January 2012. The PhD dissertation entitled "**Public procurement law as a component of competition protection**" under the supervision of Professor Stanisław Hoca PhD habil. Reviewers - Professor Alina Majchrzycka-Guzowska PhD habil. and Professor Ryszard Szostak PhD habil. The PhD dissertation considered the functions of public procurement regulations as a voice in the discussion which of these functions should have a prominent role. It aims to prove that the primary purpose of public procurement law is, both in the opinion of the European legislator and in national practice, the protection of competition on the public market. This protection should be manifested through the elimination of barriers to access to national procurement markets for contractors from other countries, and through the creation of mechanisms to protect weaker market participants, but in practice the protection of weaker market participants fails to be effected. Legal instruments for the protection of competition have been placed not only in the Public Procurement Law, but also acts on competition protection (the Act on Combating Unfair Competition and the Act on Competition and Consumer Protection Law), in criminal law, provisions on compensation claims in the Civil Code, provisions of EU law on the principles of spending EU funds and sanctions for violation thereof. These are, therefore, dispersed instruments, constituting the cognition of various administrative bodies and

various courts, which on the one hand contributes to strengthening the protection carried out in a different manner, and on the other hand often results in inconsistency of actions and discrepancies in court and administrative jurisprudence.

The dissertation was published in 2012 by Wolters Kluwer Publishing House.

II. Education and professional background, including employment in scientific units.

- **Jun 1995 - Mar 1997** - Chancellery of the Sejm - Bureau of Studies and Expertise (currently the Bureau of Analyses) preparing opinions and information for MPs regarding current legislative work,
- **Apr 1997 -Jun 2002** - Polish Agency for Enterprise Development, Head of the Research Programme, Deputy President, research into the legal environment of small and medium enterprises, preparation of annual reports on the state of the SME sector, preparation of bills and legal opinions on economic law regulations,
- **Jul 2002 - Apr 2005** - Vice President of the Public Procurement Office responsible for preparation of bills and supervision over the legislative process, issuance of administrative decisions, supervision of administrative decisions, implementation of training programmes for public administration in the field of awarding contracts, international cooperation and harmonization of law with the EU legal system, development and implementation of support programmes for entrepreneurs included in the public procurement system,
- **May 2005 - today**, a consulting company (Grupa Doradcza Sienna sp z o.o.)
- **2004-2005** Leon Koźmiński, Academy of Entrepreneurship and Management lecturer of post-graduate studies in the field of public procurement,
- **2004-2007** Lecturer in postgraduate studies in the management of EU Structural Funds - University of Warsaw,
- **2004 - 2017** Lecturer in postgraduate studies in public procurement - University of Gdańsk,
- **2006 - 2013** Lecturer in postgraduate studies in public procurement - Silesian University of Technology,
- **2007 - 2008** Lecturer in post-graduate studies in public procurement - University of Business and Administration in Gdynia,

- **2010-2011** Lecturer in postgraduate studies in public procurement - Warsaw University of Life Sciences,
- **2012 - 2014** Lecturer in issues related to EU Funds - Jagiellonian University,
- **2012 - 2018** Head of the Post-graduate Public Procurement School - Lazarski University,
- **2012 – 2019** Department of Administrative Law, Lazarski University in Warsaw, lecturer - supervisor of 27 graduation theses,
- **2016 - 2019** - Head of post-graduate studies Law for non-lawyer civil servants, Lazarski University.

III. Indication of the achievement resulting from Article 16 of the Act of 14 March 2003 on Academic Degrees and Title, and on Degrees and Title in the Field of Art (i.e., Journal of Laws of 2017, item 1798, as amended)

As a basic academic achievement within the meaning of Article 16 Section 1 and 2 of the Act of 14 March 2003 Academic Degrees and Title, and on Degrees and Title in the Field of Art (Journal of Laws of 2017, item 1798 as amended) constituting the basis for applying for the habilitated doctor of law degree I hereby present a monograph entitled "**The right to a court trial in public procurement**", ed. Wolters Kluwer Warsaw 2018. This is the first publication that presents, in a comprehensive manner, the issues subjected to court decisions during the application for a public contract, performance and after completion thereof. Until now, the literature on public procurement focused primarily on the right of contractors to use legal remedies, the interest in the exercise thereof, as well as the rules of lodging and procedures for reviewing appeals lodged during the procurement procedure. Issues related to complaints (appeals against decisions of the National Chamber of Appeal) and the role of the court and its case law in the scope beyond the disputes arising in the course of the procurement procedure have been either omitted or discussed in general terms. There has been no broader and comprehensive assessment of the right to a court trial and the assessment of the institutional legal protection system as well as the issues of the admissibility of disputes before courts resulting from the award and performance of the contract. By focusing on issues related to the National Chamber of Appeal, as a special body that settles disputes between the contractor and the contracting authority in the procurement procedure, the literature treated the

role of the court as a constitutional meaning just tangentially, paying attention to it only when considering the functioning of the National Chamber of Appeal. The research perspective adopted by me was different. As the main subject of the research, I accepted the right to a court trial in each phase of the award or performance of the contract and the role of the court system in settling disputes arising in connection with the award and performance of the contract, its impact on the perception of the rights and obligations of the parties, and the consequences of rulings. I also analysed the mutual influence of the jurisprudential views shaping in the courts with a different material jurisdiction. The entirety of the issues examined was aimed in every aspect at a search for an answer to the question whether the participants of the public procurement market are fully covered by the constitutional norm providing judicial protection, and whether this protection allows it to be stated that acting in confidence in the State and decisions issued on its behalf gives one a guarantee of lawful conduct not exposing one to a loss as a result of a different assessment of facts by various bodies exercising public authority in the public procurement system.

The adopted research method is based on a formal analysis of detailed norms of the national law and the impact of the EU law on these norms, in the context of the provisions of the Constitution and the Treaty on the Functioning of the European Union. The assessment of EU solutions also applied the historical method, pointing to the reasons for shaping court protection rules in a way that is reflected in the current regulations, as well as the comparative method presenting legal solutions of member states which, although they pursue the same purpose of the directive as access to a trial when awarding contracts, use different legal instruments for this purpose. These methods are supplemented by the descriptive method. The analysis was based to a large extent on the views of the case-law, assuming that the assessment of the right to a court trial by the courts is of key importance for the actual understanding of the concept in practice. Despite the fact that the work is a theoretical study, it contains a number of views of the case-law, including law-making rulings - ones that are important from the point of view of perceiving the role of the court in the award and performance of the public procurement contract. These are, in particular, decisions of the Supreme Court, but also of other courts, as well as of the National Chamber of Appeal. Due to the overall assessment of the issue - the monograph also gains the value of a synthetic study.

The monograph is divided into seven chapters, preceded by an introduction and finishing with conclusions. The introduction presents general issues in the classic system of scientific studies, which constitute the background for detailed considerations.

In chapter I - the right to a court trial in the EU law is presented against the background of treaty guarantees of judicial protection (right to a court trial as a fundamental right) that are specific and unparalleled in other branches of law, adopted in the appeal directives on procurement, harmonizing the rules of access to court in disputes related to procurement in member states and the purpose of such solutions. The role of the CJEU in determining the scope of the meaning of the concept of “the right to a court trial”, the scope of the subjective and substantive right to a court trial and the role of the court in public procurement are also presented. I also present the most important solutions determining the jurisdiction of courts in public procurement in most EU countries, where a variety of solutions can be seen that allow the primary goal of judicial protection, as defined in the appeal directives, to be pursued.

Chapter II is devoted to the right to a court trial in the course of public procurement procedure in the light of Polish regulations. Starting from the constitutional right to a court trial and the concept of court in the provisions of the Constitution of the Republic of Poland, the chapter discusses access to court preceded by an obligation to address a non-court body as a *sine qua non* requirement on the way to court. This body is the National Chamber of Appeal - a special body established under the Act with the statutory property and guarantees of judicial independence, which in the opinion of the Constitutional Court fulfils the role of the court of first instance in the bidding and tender process disputes. The chapter presents differences in the definition of the court shaped by the CJEU based on Article 267 of the TFEU and the concept of the court in the Constitution, which in the light of establishing the status of the National Chamber of Appeal is of considerable importance. The chapter also discusses the role and jurisdiction of the general court in reviewing rulings of the National Chamber of Appeal, including the principle of filing complaints, the issues related to complaints and its amount in the context of the guaranteed right to a court trial and securing an action against a ruling of the National Chamber of Appeal. I present statutory limitations in access to a trial in the course of

the contract award procedure - going further than in other areas of life, but I also pay attention to the problem of abuse of the right to a court trial. I also point out ambiguities as to the competence of individual courts in settling disputes in matters relating to appeals against decisions of authorities, and disputes between parties to proceedings regarding aspects not directly related to awarding the contract, but with securing the undertaking of the bid (dispute over the bid bond).

Chapter III deals with legal disputes arising as a result of the performance of public procurement contracts. As the public procurement contract is a civil law contract, most of the contentious issues submitted to the court concern liabilities as set forth in Civil Code - from the claim for the contract after the bidding and tender procedure, which requires a special form in order to be valid, through a compensation claim for failure to conclude a contract up to disputes in the course of performance of the contract concluded. In particular, the differences between the public procurement contract and the contract concluded without the application of the Public Procurement Law, including the restrictive scope of acceptable amendments to this contract and the related freedom of contract formation are assessed. The admissibility of the court ordering the amendment to or termination of the contract based on the *rebus sic stantibus* clause in the context of specific prerequisites for accepting amendments to contracts in the PPL act is discussed. In the light of this provision, the admissibility of concluding court settlements is also assessed therein. A special obligation for public procurement contracts is the obligation to use the concept of the court deposit in the event of disputes regarding the obligation to pay remuneration to subcontractors. The performance of this obligation, including the jurisdiction of the court, completes the considerations in this chapter.

Chapter IV is devoted to the judicial control of the administration, assigned in the majority of cases in the field of public procurement to the administrative judiciary, which includes its most important function, i.e. the assessment of eligibility of expenditure from the EU budget with regard to which it is necessary to properly carry out the procurement procedures. Administrative courts handle complaints about decisions of the Managing Authorities of operational programs under which funds are spent. While safeguarding both the efficiency and competitiveness in the award of contracts, they also comply with the constitutional norm of protection of the rights of the beneficiary of EU funds to the judicial assessment of the regularity of expenses

made in the public procurement system. The chapter also discusses the role of the administrative judiciary, which is the control over the jurisprudence of the Main Adjudicating Committee in cases concerning violation of public finance discipline, which decisions can be appealed against by the penalized persons to the administrative court. Contracting authorities who have been penalized by virtue of a decision of the President of PPO in the event of what has been assessed by the legislator as a particularly significant violation of the provisions on public procurement can also appeal to the administrative court. At the same time, however, the administrative judiciary has been deprived of the right of control over the control function of the President of PPO, because, unlike in the case of a financial penalty decision imposed by the President of PPO, the legislator has not provided for the right of appeal to court in this regard. The legitimacy of these solutions in the context of constitutional norms has been assessed in this chapter. Administrative courts together with the NCA safeguard the principle of openness of awarding contracts, deciding on access to public information on contracts according to the rules set out in the Act on Access to Public Information. The National Chamber of Appeal decides on access to this information on the basis of specific provisions ensuring access to information for entities applying for the contract. The overlapping powers of the authorities have not been precisely delimited so far, and hence I formulate a postulate regarding the principles of the co-application of the norms under the Act on Access to Public Information and the provisions on the transparency of the procedure for awarding a public contract. However, supervision over disciplinary proceedings regarding NCA members has been excluded from the competence of administrative courts. The common court of law is competent in these matters at the level of appeal. This competence is intended to emphasize the special role of the National Chamber of Appeal among administrative bodies, similar to the role of courts rather than executive authorities.

Chapter V analyses the role of the Court of Competition and Consumer Protection. Public procurement is part of European competition protection law, and by safeguarding competition the Court of Competition and Consumer Protection assesses whether there is tender collusion on the public procurement market. Its role manifests itself not only in individual cases, but also in shaping the perception of the rule of the public procurement market which I find the most important i.e. the principle of fair competition. The location of the Court of Competition and Consumer Protection

in the system of competition protection predestines it, in my opinion, to be entrusted with judicial control over the NCA's case law, using similar solutions functioning in the most transparent legal systems in the EU.

Chapter VI is devoted to criminal judiciary. Although the PPL Act does not contain penal provisions, the right to a court trial that implements judicial protection against offences in the course of the award and performance of contracts is guaranteed by other provisions of the law. The role of criminal courts in public procurement is manifold. First of all, criminal courts safeguard the respect of procurement rules by implementing penalisation of offences committed by persons participating in the procurement procedure or contract performance. The aim of the study is to analyse the right to bring an action to a criminal court in matters relating to public procurement. However, it does not deal with the right to a court trial in the sense of the right to defence and a fair trial, i.e. the perspective of the defendant. In this case, the right to a court trial, when the charge concerns suspicion of a crime in matters of public procurement is not different from the rights of any defendant. Broad literature, the case-law of the European Court of Human Rights based pursuant to Article 6 EKPCZ do not require a separate study focusing on the issue of public procurement. The chapter discusses the catalogue of offences and the jurisdiction of courts adjudicating in criminal matters regarding public procurement. In addition, the commission of some offences makes it impossible to apply for a public procurement contract and the role of the criminal court thus exceeds the level of penalisation and affects the determination of the actual competition on the procurement market. The legislator has assigned to criminal courts and their case-law the decision whether the person (contractor, or a member of the contracting authority or a person authorized to incur liabilities on behalf thereof) guarantees a proper performance of contracts. The scope of these offences and the differences in the assessment of the same acts by criminal judiciary and common judiciary (including the NCA) are part of the analysis carried out in this chapter. It was also necessary to assess the respect of judgements of criminal courts from other EU countries and non-EU courts. The elimination of contractors convicted for specific offences from application for a contract award must take into account the fact that committing a crime in other countries cannot exclude the prohibition to apply for a contract award as incompatible with the rule of law and equal treatment.

I have drawn a number of conclusions from the analysis presented in Chapter VII. I point out, for instance, that the right to a court trial in public procurement issues and the role of the court in contracts resulting from EU law and national legislation do not fully implement the constitutional norm under Article 45 of the Constitution, which grants the right to a court trial to everyone. The unresolved jurisdiction of the courts in the control of the activities of the President of the National Chamber of Appeal, the decisions of which precede the assessment of the dispute by the court leads, in some cases, to the inability to pursue claims before any of the courts. It is also difficult to present convincing arguments for the legitimacy of limited access to court in the public procurement control procedure. The possibility of raising objections to the control findings is limited to submission thereof to the assessment of the NCA. It is not possible to lodge a complaint or appeal to a civil or administrative court against a resolution of the Chamber. Nor can it be considered appropriate to exclude the right to exercise legal remedies by contractors applying for the lowest value contracts. It is not justified to exclude the right of parties to the appeal proceedings to submit a last resort appeal to the Supreme Court against the decision of the district court examining the appeal against the NCA's decision. The fact that this right has been granted only to the President of Public Procurement Office means that, according to the legislator, the authority may ensure protection of the individual interest in a manner at least as appropriate as the entity itself, which is contrary to the principle of common sense. Depriving the parties of the right to a last resort appeal in matters of property of great value is a solution where the public interest is placed significantly above the private interest, which questions the compliance of the regulation with the constitutional principle of proportionality. As regards elimination of financial barriers in access to court in public procurement one should consider the adoption of the so-called rights of the poor, i.e. the possibility of exemption from the costs involved in the proceedings before the NCA. The financial barrier in access to the NCA does in fact limit the right to submit a dispute to the court's judgement. What I also find incorrect is the rule according to which, prior to the court's decision, persons with regard to whom the administrative authority has ruled on the violation of public finance discipline are included in the register of the penalized which denies the essence of the right to a court trial and does not allow for the determination of the innocence of the defendant. It is also necessary to fully implement the EU Appeals Directive (2007/66/EC) by introducing solutions enabling the use of a remedy in the form of a

compensation claim in a procedure ensuring the speed of a ruling. What I find unintelligible is the solutions that cases of the highest value, which are disputes in the field of public procurement, are subject to the assessment of the non-court body and to the single-instance ruling of the court (during the appeal). Therefore, it is necessary to raise the rank of the NCA to copy the model of solutions functioning in some EU countries equalizing the regime position of such bodies with the position of courts and ensuring the seriousness of judgements. The pursuit of consistency of jurisprudence in the specialized scope of law, which includes the provisions on public procurement, should also be the basis for changes in the jurisdiction of the courts - the establishment of a limited number of courts that settle disputes under a complaint against NCA rulings.

IV. Discussion of other academic and research achievements:

In my academic work to date, I have focused on the subject of (1) public procurement, (2) state aid (3) EU economic law. In terms of quantity my output consists of:

1) two monographs, including one which is the publication of a PhD dissertation,
2) commentary on the Act - three editions amended and supplemented (5th, 6th and 7th) - (1/3 contribution in each edition),
3) a set of CJEU rulings on public procurement issues with commentary (50% contribution),
4) editing and co-authoring of a collective publication on Polish public procurement regulations after implementation new EU directives
5) chapters in 6 monographs,
6) 50 academic articles,
7) 15 popular science articles or publications.

Below please find the presentation of the publications as regards the subject matter:

Public procurement

This area, which is the main area of my academic interests, includes most of the publications prepared by me, including the publication hereby presented as an

achievement constituting the basis for applying for the habilitated doctor of law degree and other book publications as follows:

1) *Public Procurement Law. Commentary.* (Warsaw 2018 and previous editions), in which I am the author of the parts concerning the examination and evaluation of bids, documentation of proceedings, electronic bidding, contest, contract award in the fields of defence and security, awarding social services contract, Since 2012 (obtaining the PhD degree), I have been the co-author of three editions of this commentary (5th, 6th and 7th) published in the Wolters Kluwer publishing house. Each of these editions were published after a major amendment to the Act and thus covers new, previously non-regulated issues (e.g. the introduction of specific provisions on the award of contracts in the field of defence and security, regulation of the use of subcontracting, special rules for the award of social services contract, electronization of the public procurement). This is the most complete of the commentaries available on the market. I co-author 1/3 of the publication.
2) *Protection of Competition Ii Public Procurement Law* (Warsaw 2012), constituting the publication of the PhD dissertation, analysing legal solutions to protect contractors applying for public contracts prior to discretionary decisions of contracting authorities in the course of procuring services based on provisions on public procurement and conjunctions of public procurement regulations with competition laws, including cross-border competition within the meaning of the EU Treaty and EU Directives.
3) *Amendments to the Public Procurement Law. The amendment of 22 June 2016* - a collective study under my editorship, which analyses amendments to public procurement regulations as a result of the implementation of new EU directives on public procurement into the Polish law (Directive 2014/23EU 2014/24EU and 2014/25EU). This was the broadest amendment to the public procurement law that had taken place since its adoption. The publication discusses key issues and institutions implemented in the Polish legal system, attempts to resolve doubts arising from the implementation of EU legislation, and presents suggested rules for the interpretation of individual provisions.

In detailed studies, I focus on specific legal issues by distinguishing the following areas that are the subject of my research interests:

1. Principles of public procurement law

Articles regarding the principles for the award of contracts relate both to the principles explicitly stated in the Act, effective as of the date of its entry into force, and to the principles that have been added in the course of numerous amendments to the Act. These are in particular the principles of openness, transparency, fair competition, equal treatment and proportionality. I also include publications on the electronization of the public procurement among these publications, even though the obligation to use the electronic form for activities undertaken in the course of the procurement procedure is not explicitly included in the catalogue of statutory principles. However, I believe that by replacing the principle of compulsory use of a written form this form has become a principles in the Public Procurement Law. The following publications concern these topics:

1) On some controversial provisions of the new Public Procurement Law in the Kwartalnik Prawo zamówień publicznych Quarterly No. 4/2018
2) The principle of openness in the procurement procedure and the protection of the right to privacy in: Ius Novum 3/2019
3) Electronization of public procurement, in: Radca Prawny magazine January - February 2019 (181) p. 23
4) Access to legal information, and public procurement in: Finanse Komunalne 3/2019 p.72
5) Electronization of public procurements - a regulation on electronic communication means in: Zamówienia Publiczne Doradca 9/2017, p. 11
6) The principle of proportionality in public procurement in Przetargi publiczne 3/2017, p.8

The principles of public procurement law are supported by the provisions of the Constitution. Each of the above-mentioned articles discusses the subject matter covered in it, taking into account the constitutional validity of the discussed principle. The publication in the Ius Novum magazine refers to the constitutional principle of the right to privacy in the context of the principle of openness in public life and the special principle of openness in public procurement. The principle of proportionality discussed in the publication included in public tenders is an analysis of the jurisprudence of the Constitutional Tribunal interpreting the principle of proportionality

set forth in Article 31 Section 3 of the Constitution. By referring it to the provisions on public procurement, I point to the scope of activities in which the application of the principle of proportionality is of particular importance and the consequences of its introduction to the Act. In accordance with the CJEU jurisprudence, the contracting authority in the procurement procedure is the state's emanation, and the principle of proportionality restricts its freedom in drafting tender terms and conditions, just as it limits the legislator in creating the law. At the same time, it limits the principle of freedom of contracting (preparing contract templates), even though the provisions of the Civil Code apply in principle to public procurement contracts. As regards this subject matter, there are also publications regarding sources of (national and EU) law of particular importance for the public procurement system and an article about mutual relations between laws on the obligation to publish legal acts and provisions on acquisition by the public sector, which is to provide citizens with access to sources of law, of private sector services that implement this access in practice.

2. Preparation and course of the public procurement proceedings

The largest number of prepared publications refer to this subject matter and it is the main area of my research interests. Due to the thematic extension of the subject, I present the works below, broken down into narrower thematic groups. All of them concern the phase of applying for a public procurement contract.

a) preparation of the proceedings

I devote the following publications to this issue publications:

1) Forfaiting in self- government public procurement in Finanse Komunalne 4/2019
2) Employment of the disabled in the performance of public procurement contracts in: Monitor Zamówień Publicznych 2/2019, p. 4,
3) The requirement of employment in the performance of public contracts in: Kwartalnik Prawo zamówień publicznych Quarterly 1/2017, p. 31
4) The key part of the procurement in in-house contracts for collection and management of waste in: Zamówienia Publiczne Doradca 1/2017, p. 56
5) Description of the contract subject in IT projects in: Zamówienia publiczne w ramach VII osi POIG - zbiór doświadczeń. [Public procurement under the VII axis of OP IE - a set of experiences]. Warsaw, 2013

6) Determining the value of orders related to employing people to support EU projects, (50% contribution) in: Vademecum Przetargów Publicznych 1/2012 p. 76

In individual publications, I analyse both the general principles of preparing a description of the subject of the contract, such as the prohibition of discrimination of specific producers, contractors, technical solutions or products, as well as specific issues concerning individual types of contracts (e.g. IT, mining works). I also examine the application of specific detailed provisions that are binding for all contracts, but aimed at achieving the result of awarding a contract other than the basic one (competitive purchase) - for example social purposes. This issue is the subject of articles on the requirement of employment for the contract purposes imposed by the legislator in the performance of contracts and the right of the contracting authority to request the contractor to employ persons with disabilities when applying for the contract and during the performance of the contract. Publications on the description of the subject of the contract include:

b) examination of bids and criteria for the evaluation of bids

I devote nine publications to the testing activities and the price of bids in the public procurement procedure and the results of these activities:

1) Invalidation of proceedings on grounds of public interest, in: Zamówienia publiczne. Publiczne Doradca 1/2019, p. 11
2) Binding the offer as a condition of choosing it in a public tender, in Kwartalnik Prawo zamówień publicznych Quarterly 3/2018,
3) VAT rate for comprehensive services in the Monitor Zamówień Publicznych 8/2018, p. 18
4) An important component of the price in Przetargi publiczne 2/2018, p. 8
5) Lowering the bid price by the contractor in: Zamówienia Publiczne Doradca 10/2017, p. 42
6) Evaluation of bids in the reverse procedure in Finanse Komunalne, 5/2017, p. 48
7) Changes regarding the evaluation of bids in Zamówienia Publiczne. Doradca 9/2014, p. 16

8) Abnormally low price. The need to improve solutions, in: Zamówienia Publiczne. Doradca 5/2012, p. 22

The purpose of the public procurement procedure is to conclude a contract, which is determined by the definition of the procedure contained in Article 2 Item 7a) of the Public Procurement Law. For several years, the case law in public procurement cases, however, has presented divergent views on the admissibility of the selection in the contract award procedure after the expiry of the period of being bound by this bid. Disputes subjected to the decisions of the National Chamber of Appeal and regional courts end with different rulings, and legal uncertainty is therefore enhanced. The situation was not changed by the amendment to the provision on the effects of the expiry of the bid validity period, as well as the decision of the CJEU involved in resolving the problem as a result of the question referred by the National Chamber of Appeal. The utterly contradictory views consist in the recognition that the bid validity is not necessary for its selection, and on the one hand, the expiration of the period in which the contractor is bound by the bid, releasing the contractor from the obligation to conclude a contract, does not, however, exempt the contracting authority from the obligation to include this bid in the selection procedure of the most advantageous bid, on the other hand, however, - that the expiry of the bid validity results in the lack of a bid, so there is no possibility to choose it. I support the view of the lack of the possibility of choosing an bid after the expiration of the bid validity. It results from the civil law nature of the bid, i.e. due to Article 14 of the Public Procurement Law Act, that its necessary construction element is its binding nature. I devote the first of the publications listed below primarily to this subject. The rest of the publications relate to the specific aspects of the bid evaluation study, including new legal solutions such as the procedure for the reversed evaluation of bids or the application of the cost criterion (the so-called final cost) instead of the price criterion when evaluating bids.

c) conditions for participation in the proceedings

The publications regarding the conditions for participation in the proceedings analyse both formal requirements (so-called exclusion conditions), such as payment of public fees, no criminal record, no bankruptcy or liquidation, and other, as well as substantive requirements - experience, holding competent persons, financial resources or technical means. These are:

1) Joint participation in the procedure of contractors taking advantage of the VAT exemption in: Zamówienia Publiczne Doradca 11/2018, p. 34
2) Membership in a capital group and exclusion from proceedings in: Przetargi publiczne 6/2017, p. 10
3) Conditions for participation in the procurement procedure in: Zamówienia Publiczne Doradca 2/2017, p. 6
4) Verification of belonging to a capital group in: Przetargi publiczne 10/2013, p. 25
5) Assessment of the contractor's ability to properly perform the contract in the light of Article 22 Section 5 of the Public Procurement Law and the opinion of the President of PPO in: Przetargi publiczne 5/2013, p. 18
6) The conduct of the contracting authority where the manager thereof applies for the contract at the contracting authority in: Prawo finansów publicznych June - August 2012, p. 41
7) A natural person as the contractor of a public procurement contract in: Przetargi publiczne 4/2012, p. 8

The subject matter of the publications is not limited to research on formulating conditions, including their most essential feature, i.e. proportionality, required by law, but also includes research on the manner in which contractors meet the conditions and the scope of the contracting authority's expectations in this matter. They discuss documents that may be required by the contracting authority, as well as the most difficult problem in recent years, i.e. the admissibility of invoking the potential of the so-called third parties to demonstrate that the contractor meets the conditions for participation in the proceedings. Imprecise and even carelessly formulated provisions give rise to a number of ambiguities and often require a decision to abandon the linguistic interpretation of the law and to reach for teleological and pro-European interpretation. n my publications, I suggest an utterly rare omission of the clear linguistic interpretation, indicating that abuse of other interpretations may lead to undermining confidence in the state.

The publications also explain the grounds for exclusion from domestic proceedings (not included in obligatory catalogues of EU directives), such as e.g. belonging to a joint capital group with a competitive contractor in the course of the tender. I am critical of the purposefulness of this premise. Despite the right intention, which is the elimination of tender collusions, it is impossible not to notice that first of all tender

collusions are relatively rarely within the capital group and therefore the premise is ineffective (poorly targeted), and secondly there are and there have been other grounds for elimination of collusion participants from the tender proceedings. This premise is an example of unnecessary formalism and too casuistic regulation of procurement rules, which I am highly critical of. At the same time, however, I point out the phenomenon of contractors' abuse of rights granted to them by public procurement regulations. An example here is the publication regarding the creation of multi-entity consortia created solely for the purpose of using the subjective VAT exemption to reduce tax costs and distort competition. The publications on the issues discussed include:

d) procedures for the award of contracts

The publications presented below relate to the rights and obligations of the parties to the procurement procedure in the course of the proceedings, i.e. from the moment of its initiation to completion, as well as the conditions for the admissibility of applying particular modes of awarding contracts. These are:

1) Organization and rules of conducting the contest in: Zamówienia Publiczne Doradca 3/2018, p. 6
2) In the single-source mode in: Monitor Zamówień Publicznych 1/2017, p. 10,
3) Submission of applications and bids. Zamówienia Publiczne Doradca 8/2016, p. 54
4) Insurances in the Mutual Insurance Company and the provisions on public procurement, in: Prawo Asekuracyjne 3/2016, p. 51
5) Awarding contracts for banking services for the support of the budget of a local government unit in: Finanse Komunalne 10/2014, p. 40
6) Defects and errors of project documentation, and additional orders in construction works in Przetargi Publiczne 3/2014 p. 29.

The subject matter of procurement procedures includes primarily the admissibility of the application of certain modes for the selection of the contractor (this issue is primarily the subject of the article on the admissibility of the application of the exceptional procedure - a single-source contract). It is also an analysis of the existence and scope of the obligation to apply public procurement rules to award contracts for a specific item, such as a property insurance and a third-party liability

insurance when the insurer is the Insurance Company whose member is the insured party. I analysed the national law, which allows the conclusion of such a contract without taking into account procurement procedures - and raises serious doubts as to its compliance with the EU law in the publication in the Prawo Reasekuracyjne.

I also consider certain relationships between the insurance law (and the banking law) in the publication on the tender bond in the public procurement procedure in the form of a guarantee. Their form, the entity covered by the guarantee, the circumstances of payment as well as changes in the public procurement regulations concerning the electronization of contracts - the form of guarantees arouses constant controversy in the case law, which I try to present stating that I am against the superfluous rigour of some views, reducing the procedure of participation in the contract award procedure to the formulatory process and losing the sense of such conduct and the essence of the tender bond, which is to secure the obligation from the bid. The mutual relationship between the provisions of the Public Finance Act and the Public Procurement Law Act on the possibility (or lack thereof) of syndicated banking service for the support of a budget of a local government unit posed a particular difficulty for several years. I am in favour of the total admissibility of performing this service by a consortium of several banks (an article in Finanse Komunalne).

The procurement procedure in its essence does not constitute a contest. However, as it precedes the possibility of applying the single-source procedure and the negotiated procedure without announcement on the basis of a detailed premise, in fact it is the awarded contestants who are just the winners of the future contract award proceedings. I therefore place the contest among award procedures and I devote some articles to it, indicating the numerous ambiguities or statutory errors in the regulations that affect it and the consequences of these errors, in particular the danger of corruption and the risk of the impact of the environmental connections between its participants and the organizers on the contest results.

3. Performance of public procurement contracts

The academic interest in civil law resulted in the preparation of a number of publications regarding the implementation of public procurement contracts, i.e. contracts which the provisions of the Civil Code apply to, unless the Act provides

otherwise. The following publications concern both the provisions of the Civil Code and their relationship with public procurement regulations

1) Obligation to conclude the final contract - a review of interpretation difficulties, in: Kwartalnik Prawo Zamówień Publicznych Quarterly No. 4/2018
2) Equivalent solutions for public procurement contracts in: Budownictwo i Prawo 3/2018, p. 33
3) Changes in contracts in the current practice of public procurement in: Kwartalnik Prawo Zamówień Publicznych Quarterly No. 4/2017, p.21
4) Public procurement contracts. Current status, future status in System Prawa zamówień publicznych Stan obecny i kierunki zmian, Wrocław, Toruń 2015

The civil law and the scope of modifications of the Civil Code regulations by specific provisions of the Public Procurement Law are the subject of the publication of a flat-rate remuneration and admissibility of awarding additional contracts using this type of contractual remuneration with the co-application of specific provisions included in the public procurement law. These special provisions include primarily the limited possibility of amending the public procurement contract. Guidelines for determining the limits of the admissibility of changes in such a contract are outlined by the CJEU in ruling C - 454/06, which then formed the basis for shaping the provisions of EU directives from 2014. These directives introduced, for the first time, the possibility of subject changes in public procurement contracts on the part of the contracting authority. These solutions (as well as solutions in the legal systems of some member states implementing the directives) are the subject of the article in the Kwartalnik Prawo zamówień publicznych Quarterly No. 4/2017. I consider the relationship between the provisions on debt and receivables assignment from the Civil Code and the provisions on subjective changes in the public procurement law to be insufficiently regulated. Similarly, the provisions on subjective transformations (mergers and divisions of companies) in the meaning as set forth by Code of Commercial Companies and Partnerships and changes to the parties to the public procurement contract are unclear:

4. Subcontracting and participation of small and medium enterprises in the public procurement market

A separate and relatively new issue subject to special regulation in the public procurement regulations is the admissibility and rules for the performance of subcontracts and the liability of the contracting authority towards subcontractors. I devote the following publications to this subject:

1) Possibilities of supporting small and medium enterprises in public procurement not covered by EU directives in: Potrzeby i kierunki zmian w Prawie Zamówień Publicznych, M Stręciwilk, A Dobaczewska [ed.], Warsaw 2018,
2) Subcontracting in public procurement in: Monitor Zamówień Publicznych 4/2017, p. 23,
3) Verification of subcontractors in the amendment to the Public Procurement Law in Zamówienia Publiczne Doradca 6/2016, p. 42
4) On the effective verification of the potential declared by a person supporting a contractor applying for a public procurement contract in: Kwartalnik Prawo Zamówień Publicznych Quarterly No. 3/2015, p. 34
5) Selection of a subcontractor for a public procurement contract in: Kwartalnik Prawo Zamówień Publicznych Quarterly No. 1/2015, p. 25
6) Subcontracting in public procurement in: Kwartalnik Prawo Zamówień Publicznych Quarterly No. 2/2014, p. 105
7) Amendment to the Public Procurement Law. Draft amendments in the scope of subcontracting, in: Zamówienia Publiczne. Doradca No. 3/2013, p. 31
8) Subcontracting in public procurement. Evaluation of changes, in: Zamówienia Publiczne. Doradca No. 5/2012, p. 8

The research on subcontracting presented in the aforementioned publications concerned both the stage of awarding the contract and of the performance thereof. It included the examination of the contracting authority's powers to verify the subcontractors proposed in the contractor's bid, the obligation and manner of indicating subcontracting in bids, the contracting authority's right to require specific subcontracts, joint and several liability for the subcontractor and the contractor and the relationship of the provisions of the Public Procurement Law to similar solutions adopted in Civil Code. All these considerations were carried out taking into account the constitutional principle of economic freedom and rulings of the CJEU regarding

the limitation of subcontracting in public procurement and its effects on the treaty rules. The issue of subcontracting is closely related to the involvement of small and medium enterprises in the public procurement market, as the scale of contracts often prevents them from being obtained directly by SMEs. An analysis of legal solutions and *de lege lata* and *de lege ferenda demands,* actions that could increase this share in accordance with the will of the EU legislator expressed in preambles to Directives 2014/24UE and 2014/25 EU were specifically included in the last of the publications listed below.

5. The system of legal remedies in public procurement

The last and most important publication in this field is the publication presented as a scientific achievement within the meaning of Article 16 Section 1 and 2 of the Act of 14 March 2003 on Academic Degrees and Title [....] i.e. Prawo do sądu w zamówieniach publicznych, Warsaw, Wolters Kluwer 2018. Moreover, legal remedies were analysed in the following publications:

1) Legislative demands as to shaping the system of legal remedies and adjudicating authorities in public procurement matters, University of Zielona Góra, paper submitted to publication)
2) On the need to improve legal protection measures in: Kwartalnik Prawo Zamówień Publicznych Quarterly No. 1/2016, p. 27
3) Meeting the deadline for lodging an appeal, in Przetargi Publiczne (50% contribution) 6/2015, p. 42
4) The National Appeal Chamber in the competition protection system in Zamówienia Publiczne. Doradca No. 12/2012, p. 52

In my publications, I consider the role and the political position of the bodies appointed to provide legal protection for participants in the public procurement procedure, the legal nature of the appeal procedure, supporting the civil-law nature of the procedure and arguments against the administrative-law regulation. I also point to doubts regarding solutions adopted in the national law as to compliance with certain requirements of the EU law, in particular regarding the calculation of time limits for lodging appeals.

6. Operating of the public procurement system

I devoted part of the publications to the operating of the public procurement system in a broader sense, i.e. to locate these provisions in the legal system and the efficiency of the adopted solutions, their impact on the economy and the possibility of obtaining knowledge about the effectiveness of solutions under the provisions establishing reporting obligations. The basic publication in this area is a monograph prepared on the basis of the PhD dissertation. In addition, these include analyses of annual reports of the President of the Public Procurement Office presented in articles. Below please find a list of publications in this field:

1) Ochrona konkurencji w zamówieniach publicznych [Protection of Competition in Public Procurement], Warsaw, Wolters Kluwer 2012, - Ph.D dissertation
2) Conclusions and recommendations from the report of the President of the Public Procurement Office on the operating of the public procurement system in 2013 Zamówienia Publiczne. Doradca No. 8/2014, p. 36 (scientific popularity)
3) What we do not know about the public procurement system in: Zamówienia Publiczne. Doradca No. 7/2012, p. 26 (scientific popularity))

The area of my research work also includes the EU law, e.g. the legal basis for spending funds from the structural funds. In the following publications:

1) Control of eligible expenditures from EU funds, in: Wymiar wolności w prawie administracyjnym, [The Dimension of Freedom in Administrative Law] M. Rogalski [ed. Warsaw 2018,
2) Public procurement in EU projects in: Zarządzanie Projektem Europejskim [European Project Management], 2nd edition, M Trocki, B. Grucza [ed.], PWE Warsaw 2015,
3) Financial adjustments, as part of the system of controlling the spending of European funds in Gmina (147)/2013 (part 1), (148)/2013 (part 2) and (149) part 3 p. 39.

- I reviewed the provisions of EU regulations regarding eligibility of expenditure, i.e. Regulation 1083/2006EC and Regulation 1303/2013UE. The inconsistency with the provisions of the national law, in particular the difference in the Civil Code regulations on the loss were the basis for formulating the conclusions in all these publications. The aforementioned publications (especially two parts of the article published in the

Gmina monthly) provide a critical analysis of the lack of respect for the system of constitutional sources of law in the course of creating control rules over expenditure from EU funds, in particular through attempts to grant binding power with the *erga omnes* effect to the guidelines of the minister responsible for development. I also consider the admissibility of imposing contractual sanctions in the form of reducing the co-financing provided for in the contract for granting funds without determining the actual amount of loss to the EU budget, although it is this loss that is the statutory basis (resulting from the said EU regulations) reducing the amount of support. These critical evaluations, in line with the much wider criticism of this manner of application of the law, including criticism expressed in the case law, have contributed to the changed perception of the Minister's guidelines and recognizing them, at most, as part of a civil law contract between the institution transferring funds and the beneficiary, rather than the provisions of the law.

The European law is also the subject of some publications in the field of public procurement. These relate to the pro-EU interpretation of the CJEU case-law and its impact on the practice of applying the law in the state and the rules for the implementation of the EU legislation. Below please find a list of publications in this field:

1) Economic relations of the contracting authority and the contractor as the premise for non-competitive award of public procurement contracts in the national law and the EU law in Prawo Europejskie w Praktyce No. 7-8/2018, p. 31
2) Is the contracting authority obliged to apply directly the EU law contained in the directives if it is not compliant with the provisions of the national law in Przetargi publiczne 8/2018, p. 40
3) New directives on public procurement. Zamówienia Publiczne Doradca 6/2015, p. 54 (special issue, post-conference publication)
4) Zamówienia Publiczne w orzecznictwie Trybunału Sprawiedliwości Unii Europejskiej - lata 2010-2016, [Public Procurement in the Case Law of the Court of Justice of the European Union - 2010-2016], (ed.) Warsaw, 2016

State aid

My scientific achievements also include studies on state aid. I published the most serious publications regarding this field of law before obtaining the PhD degree. These include the following studies prepared for the Office of Competition and Consumer Protection (together with co-authors) (1) Public-private partnership vs. state aid, Warsaw, Office of Competition and Consumer Protection, 2007, (2) Public services vs. state aid, Warsaw, Office of Competition and Consumer Protection, 2007, (3) Income taxes and excise duty vs. state aid, Warsaw, Office of Competition and Consumer Protection, 2007. After obtaining the PhD degree, the state aid was the subject of my article concerning the admissibility of state aid for airports:

1) State aid for airports at: Infolotnicze.pl **https://www.infolotnicze.pl/2018/09/25/pomoc-publiczna-dla-portow-lotniczych/**

The issue of state aid for entrepreneurs managing airports is characterized by special rules not applied in other areas of economic life, and in my opinion it is the only publication in this field currently available in the Polish language. The publication serves as an attempt to distinguish areas constituting economic activity in the case of an airport operator and areas of public tasks not covered by the prohibition of state aid and permissible compensation for services of general economic interest. It also analyses the admissibility of restructuring aid and assistance based on detailed decisions of the European Commission regarding support for airport managers and group exemptions.

V. Academic plans

I am currently in the process of preparing a publication regarding the admissibility and rules for granting state aid in the cultural sector. The culture sector is an atypical economic activity that is not always profit-oriented as well as activity not entirely economic, hence the application of the state aid rules established for use in the "typical" economy and entrepreneurs is extremely complicated. So far, only the decisions of the European Commission and the CJEU case law address this issue, and there are hardly any academic studies of this subject. The study should,

therefore, be an important contribution to the perception of the state aid regulations not only in the cultural sector but also in the science and research sector that is related to culture as well as the admissibility of their support when they are related to commercial activities.

After its completion, I intend to deal with the mutual relationship between the openness of public life and the protection of secrecy protected by the law in the course of applying for and performance of public procurement contracts. This issue, despite relatively many rulings of the Supreme Court, the CJEU, and the relatively rich literature, is still the subject of numerous controversies and the case law of the courts has not been fully formed. Therefore, it seems necessary to make another attempt to present arguments in the discussion which of these values should be of primary importance and what consequences should be expected depending on the adopted solutions.

By participating in the implementation of the research plans of the Department of Administrative Law of the Faculty of Law and Administration at the Lazarski University, I will be a member of the team preparing the Dictionary of Public Procurement - an encyclopaedic article presenting the definitions of concepts developed by the legislator important in the public procurement procedure, their implementation and procedures regarding the liability of persons participating in the award and performance of contracts. The dictionary is expected to present several hundred detailed entries.

Włodzimierz Dzierżanowski