

DOCTORAL DISSERTATION SUMMARY

Magdalena Falkowska

„Limits of the freedom to conclude public procurement contracts”

prepared under the guidance of

dr hab. Marii Boratyńskiej, prof. UW

The dissertation is devoted to the problem of the limits of freedom to conclude public procurement contracts and the limits of freedom to shape their content.

The main areas of research were determined by the limits of freedom of contract indicated in Article 353¹ of the Civil Code, i.e. the contradiction of its content or purpose with to the nature of the relationship, with statutory law, and with the principles of community life. The dissertation covers issues related to the determination of the search for the limits of freedom of contract and the formation of its content in public procurement law and the designation of some of them. The main thesis of the dissertation relates to the search for and classification of the limits of freedom of contract characterizing the group of contracts functioning under the common concept of a public procurement contract.

The research objectives were achieved by applying three research methods: dogmatic, empirical and historical.

The dissertation consists of an introduction, eight chapters, a conclusion and final conclusions. Chapter I discusses issues concerning the characteristics of a public procurement contract as a civil law contract with a public law element. Its purpose was to properly situate the public procurement contract in the legal system and answer the question of the nature of the public procurement contract, from a branch of law perspective. Chapter II of the dissertation was devoted to analyzing the meaning of the term “public procurement” in order to situate the procurement contract in the legal system. Considerations include the various elements of the definition and issues related to the nature of the contract in order to determine whether it can be considered a named contract. Chapter III includes an analysis of the relevance of the principle of freedom of contract itself to the civil law system and public procurement law. Chapter IV briefly outlines the concept of the limits of freedom of contract in order to seek and delineate its scope in subsequent Chapters. Therefore, the analysis of the limits of freedom of contract, which is already appropriate, has been carried out respecting the Code's distinction

between statutory limits (Chapter V), those set by principles of community life (Chapter VI) and the nature of the legal relationship (Chapter VII). The search for the statutory limits of contractual freedom was divided into three areas covering two stages of the purchasing process: the preparation of the procedure and its conduct, and, in addition, the limitations on the contracting authority's ability to shape the content of the contract. In terms of the boundaries set by principles of community life, the most interesting ones, among them the principles of public procurement law and the legitimate needs of the contracting authority, are discussed. The search for the nature of the public procurement contract is closely related to the public law element, hence the considerations focused on the public law purpose of purchase, economic freedom, the principle of economic efficiency. Complementing these considerations was the search for the actual limits of freedom of contract, which was presented in Chapter VIII.

The last part of the dissertation is devoted to a summary and conclusions; it brings an answer to the question of the scope and meaning of the limits of freedom of contract in the conclusion of public procurement contracts and an attempt to evaluate them. A public procurement contract is a contractual relationship of a special nature, the features of which are determined not only by the specific definition itself, but by a whole system of restrictions on contracting, making it increasingly different from other contracts in civil law transactions.