

NICOLAUS COPERNICUS UNIVERSITY OF TORUŃ**FACULTY OF LAW AND ADMINISTRATION****Department of Public Finances Law****mgr Magdalena Taraszkiewicz****SUMMARY of the doctoral dissertation: "Liability of the contracting authority for violation of the rules of public procurement"****written under the guidance of dr hab. Jacka Wantoch-Rekowskiego, prof. UMK
in Toruń**

The doctoral dissertation deals with the problem of the contracting authority's liability for the breach of the rules of awarding public contracts. The choice of research topic was not made at random. One of the main reasons for choosing the topic was the state of the literature on the analysis of liability for violation of public procurement rules. A lot of literature has been devoted to the issue of infringement of public finance discipline and analysis of the Public Procurement Law, however, these are mostly commentaries to Acts. There is a monographic position of M. Bielikow-Kucharska¹ on the market, which discusses the issues of responsibility for the breach of public finance discipline in the area of public procurement. However, there is no monograph comprehensively referring to liability for violation of the Public Procurement Law. It was therefore justified to undertake a joint examination and description of the issue of liability that may arise both under the Public Procurement Law, public finance discipline, civil law, and criminal law in connection with the breach of the rules of public procurement.

Against the background of the formulated topic of the dissertation, reference was also made to the concept of "liability". This is about liability in the normative legal sense, resulting from the provisions of law. Non-compliance with the provisions of the Public Procurement Law or the violation of these provisions by the contracting authority is a subject to administrative liability, liability for violation of public finance discipline, criminal liability, and, to a lesser extent, civil liability.

¹ M. Bielikow - Kucharska, *Liability for violating public finance discipline in the area of public procurement*, Warsaw 2016.

Expenditure of public funds, manifested in particular by awarding public contracts and the application of the Public Procurement Law by entities obliged to do so, must be subject to accountability in view of the need to protect public resources, the rationality and expediency of their expenditure, as well as to ensuring equal and fair competition among entities competing for the contract.

The main research problems in the scope of the chosen topics of considerations can be reduced to the following general question:

Are the applicable regulations on the legal liability of entities applying the provisions of the Public Procurement Law or preparing and conducting the public procurement procedure properly structured, and do they effectively secure the proper preparation and conduct of the public procurement procedure? Answering the abovementioned question required clarification of more detailed issues, namely: violation of which public procurement rules should be considered particularly reprehensible and which are or should be sanctioned? What is the subjective scope of liability for violation of the Public Procurement Law? What is the nature and types of liability of entities applying the Public Procurement Law or preparing and conducting public procurement procedures in relation to their breach of the provisions of the Public Procurement Law? Does the catalogue of prohibited acts for which one may be held liable in connection with the violation of the rules of public procurement properly ensure the protection of public spending? What is institutional liability, and what is individual liability in connection with the violation of the provisions of the Public Procurement Law? What kind of premises determine the existence and shape of liability in relation to the contracting authority's breach of the provisions of the Public Procurement Law? What kind of sanctions are there for violating the provisions of the Public Procurement Law by the contracting authority?

The main purpose of the work in the form of assessing the applicable regulations in the field of liability for violation of the Public Procurement Law and the formulation of directional proposals for changes is conditioned by the adoption and implementation of the following specific objectives: discussing the categories of premises determining the existence and shape of liability in connection with the breach of the Public Procurement Law, systematization and identifying the theoretical and practical problems resulting from the application of the provisions of the Public Procurement Law, and liability for the violation of these provisions, determining the model of institutional and individual liability in connection with the violation of the provisions of the Public Procurement Law.

Taking into account the abovementioned assumptions, the following research thesis was adopted, in addition reflecting the basic research problem of the chosen topic of the dissertation:

The current regulations on liability for violating the rules of awarding public contracts do not effectively secure the proper preparation and conduct of a public procurement procedure. The subjective scope of liability for the breach of the Public Procurement Law may cause widely understood interpretation problems. Depending on the qualification of the contracting authority to the group of entities specified in Art. 4 of the Public Procurement Law and art. 5 of the Public Procurement Law, there are various violations of the law, the catalogue of penalties is also different, and the nature of the responsibility itself is different.

The abovementioned thesis was formalized by detailed (working) hypotheses verified in individual chapters:

H₁: The Public Procurement Law has not developed uniform criteria of responsibility for improper preparation and conduct of the public procurement procedure.

H₂: The wide scope of liability for violating the Public Procurement Law is not transparent and may lead to interpretation problems. The scope and nature of liability, or the catalogue and the severeness of penalties, depend on the contracting authority's qualification to the group specified in Art. 4 of the Public Procurement Law or art. 5 of the Public Procurement Law

H₃: The assessment of the regulations in the field of liability for the breach of the Public Procurement Law cannot be positive. The lack of uniform legal regulations relating to this matter results in the illegibility and lack of understanding of these regulations by their recipients. Hence, it is justified to postulate changes in this respect.

The verification of the research thesis and specific hypotheses was supported by research based on non-reactive research methods. In addition to the analysis of the literature on the subject of the dissertation, the legal-dogmatic method was widely used, allowing the examination of legal acts and drafts of these acts, functioning both under national law and the European Union, regulating the principles of liability for violating the rules of public procurement. The reports of the President of the Public Procurement Office on the functioning of the public procurement system over the period between 2013 and 2020, the reports of the Chief Spokesman for Public Finance Discipline between 2013 and 2020, as well as the rulings of administrative and civil courts, the Main Adjudication Committee in Cases of Violation of the Public Finance Discipline and National Appeal Chamber. As an auxiliary method, the historical and legal method was used, which allowed to analyse the process of shaping the responsibility for the breach of the rules of awarding public contracts.

The doctoral dissertation consists of five chapters in which the various types of liability of the contracting authority for the violation of the rules of awarding public contracts were

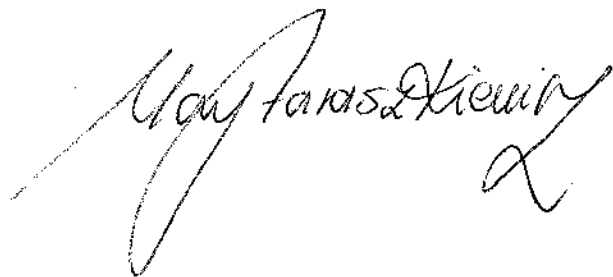
discussed. It also takes into account the regulations introduced by the Act of March 2, 2020 on special solutions related to the preventing, counteracting, and combating COVID-19, other infectious diseases, and the crisis situations² occurring as a result of these diseases and related to public procurement. **Chapter I** is an introduction to the problem of the contracting authority's liability for violating the rules of awarding public contracts. It presents the concept and types of legal liability, the subjective and objective scope of the Act – Public Procurement Law, and the principles of awarding public contracts. This information is necessary for further explanation, as it allows to understand what public procurement is, who is obliged to apply the Public Procurement Law and what rules should be followed in order to avoid possible liability. **Chapter II** is devoted to the responsibility of the contracting authority for violating the rules of awarding public contracts regulated in the Act – Public Procurement Law. It discusses the nature and principles of the contracting authority's liability, the subjective and objective scope of liability, the characteristics of the procedure in connection with the violation of the rules of awarding public contracts, and penalties that may be imposed on the contracting authority. The reports of the President of PPO on the functioning of the public procurement system over the period between 2013 and 2020 were analysed. **Chapter III** concerns the contracting authority's liability that may arise under the Act on liability for violation of public finance discipline. It presents the concept and scope of public finance discipline. Responsible entities were discussed in detail, as well as the catalogue of forbidden acts resulting in violation of public finance discipline in the area of public procurement, as well as penalties and their severeness. The reports of the Main Adjudicating Committee in Cases on Violation of Public Finance Discipline in the scope of violation of provisions on public procurement in the years between 2013 and 2020 were analysed. **Chapter IV** describes the contracting authority's criminal liability which may arise in the event of a breach of the rules of awarding public contracts. The nature and principles of the contracting authority's criminal liability, the subjective scope and premises of the contracting authority's criminal liability, as well as the objective scope of the liability were presented. The acts for which the contracting authority may incur criminal liability and the severeness of the possible penalty were discussed in detail. **Chapter V** describes the contracting authority's civil liability for the breach of the rules of awarding public contracts. It presents the nature and premises of civil liability, the subjective and objective scope of the contracting

² The Act of March 2, 2020 on special solutions related to the prevention, counteracting and combating COVID-19, other infectious diseases and the crisis situations caused by them (consolidated text, Journal of Laws 2020, item 1842, as amended)), hereinafter: the Anti-Covid Act.

authority's civil liability, as well as specific regulations adopted in connection with the occurrence of COVID-19. The last part of the dissertation presents a synthesis of conclusions drawn from individual chapters.

Based on the results of the discussion of detailed research problems, it can be concluded that the main thesis of the doctoral dissertation has been positively verified. The current regulations on liability for violation of the Public Procurement Law do not effectively secure the proper preparation and conduct of a public procurement procedure. This is due to the fact that the contracting authority's liability for the breach of the rules of awarding public contracts in many legal acts may lead to interpretation difficulties and result in a lack of understanding of these regulations by entities obliged to apply the Public Procurement Law.

In addition, although the catalogue of forbidden acts that can result in the contracting authority's liability for violating the rules for awarding public procurement contracts is getting more and more detailed, the said detailing concerns primarily the discipline of public finances. Criminal liability is not so widely regulated, and it is the most severe for an entity acting contrary to the letter of the law. It is worth considering the introduction of penal provisions in the content of the Public Procurement Law, referring strictly to acts violating the provisions of this Act, as it is regulated, for example, in the Act of July 7, 1994 – Construction Law³. The criteria and nature of liability for violating the rules on awarding public contracts should also be standardized. Double punishment for the same act under one Act is unacceptable. The use of subjective and institutional liability by the legislator in the scope of the contracting authority's liability should be considered defective, because an act or omission of an entity is always followed by an act committed or omitted by a human being.



³ Act of July 7, 1994 - Construction Law (consolidated text, Journal of Laws 2020, item 1333, as amended).

