

Mateusz Brzeziński, MA in Law - Summary of the doctoral dissertation

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## **Realization of the sustainable development principle in public-private partnerships - summary**

The assumpt for choosing the subject presented in this doctoral dissertation was the interest in the changes taking place in recent years in the area of legal forms of implementation of public tasks through public procurement. These were changes that took on both a normative dimension, which was reflected, for example, in the adoption of a new law on public procurement in 2019, as well as non-normative, related to the promotion of the so-called new approach to public procurement. This process was a response to the necessity of solving problems that had been reported over the years by both practitioners and representatives of the legal doctrine. The result of these changes was not only changes to the regulations on the conduct of public procurement proceedings, but also the implementation of changes that can be described as an attempt to introduce systemic changes in the context of the procurement process. Taking into account the value of the public procurement market in Poland, which in 2021 amounted to about PLN 297.8 billion, including contracts awarded under the Public Procurement Law amounted to PLN 184.6 billion, which accounted for about 7.04% of GDP in 2021, paying attention to this issue is highly recommended, because by implementing the postulates on strategic spending of public funds in the purchasing process, there is an opportunity for better use of public funds in the implementation of public procurement. These observations have led to a search for an answer to the question of whether the above mentioned procedures will actually deliver positive changes on the grounds of the application of the Public Procurement Law, and whether they are also applicable to the other legal forms of implementing public tasks that are part of the national public procurement law system, in this case to projects implemented under the provisions of the Public-Private Partnership Law. The second aspect of the subject undertaken on the grounds of dissertation, is the issue of implementation of the concept of sustainable development which is increasingly applicable, affecting various spheres of everyday life and science, which makes it a practical challenge to adapt it, including on the

legal ground. The matter of the legislator's creation of legal standards for sustainable development, through which the concept infiltrates and finds application in the legal system, is one of the current problems of the direction of the law's development. This is an important issue, at least from the point of view of the axiology of law, according to which the legislator, introducing new concepts and institutions into the legal system and seeking to achieve broader goals, gives these concepts the character of a principle of law, which is particularly important, since the principles of law set the direction of legislative activity in the process of lawmaking and guide the process of interpreting legal provisions. Formation of socio-economic development on the basis of the concept of sustainable development requires the use of legal instruments that, due to their economic potential and social impact, may benefit the implementation of sustainable development. Public procurement is important for the formation of socio-economic relations. In recent years, the legislator has introduced many significant changes, in the area of legal forms of implementation of public tasks. These were changes that took on both a normative dimension, which was reflected, for example, in the adoption of the new Public Procurement Law in 2019, and non-normative, related to the promotion of the so-called new approach to public procurement. This process was a reaction to the necessity of solving problems that had been reported over the years by practitioners and representatives of the doctrine.

These observations led to a searching for an answer to the question of whether the above-mentioned operations will actually result in positive changes on the grounds of the application of the Public Procurement Law, and whether they are also applicable to the other legal forms of realization of public tasks that are part of the national system of public procurement law, in this case to projects implemented under the provisions of the Public-Private Partnership Law. Public-private partnership as a legal form of public task realization differs from traditional public procurement in a number of aspects that may favor a comprehensive approach to the implementation of certain undertakings, in relation to the often repetitive and schematic tenders that do not take into account per se a broad approach to the purchasing process. Therefore, the subject of research in the dissertation was the issue of implementation of the assumptions of the concept of sustainable development in projects implemented under public-private partnerships.

The purpose of this dissertation is to make a valuable evaluation of the possibility of implementing the postulates related to the concept of sustainable development in connection with the implementation of public tasks. To make such an evaluation possible in view of the

subject and purpose of the dissertation, research directions were established, from which the research thesis and research hypotheses were defined. The thesis was established as the claim, according to which systemic legal solutions are a factor enabling the realization of the postulates of sustainable development on the grounds of projects implemented in the public-private partnership. The thesis was established as the claim that the systemic solutions of national law are the appropriate reference sub-system that enables and at the same time guarantees the realization of the constitutional principle of sustainable development in the framework of projects implemented under the formula of public-private partnerships.

The correctness of the above thesis will be demonstrated through the adopted detailed research hypotheses:

- 1) the infiltration of the concept of sustainable development on the normative ground due to the genesis and axiological basis of its demanded phenomenon on the ground of the implementation of public tasks;
- 2) systemic solutions adopted in the positive law shaping the public procurement system, can promote the rationalization of purchasing process, which one of the solutions may be the use of public-private partnerships;
- 3) the efficiency of spending public funds can be increased with a strategic approach to the performance of public tasks, through an integrated approach to the implementation of purchasing goals;
- 4) current legal tools promote the use by public authorities in the purchasing process solutions that can implement green, socially responsible, innovative solutions;
- 5) public-private partnerships as a legal form of carrying out public tasks can, due to their specificity, enable the concept of sustainable development to a greater extent than traditional public procurement.

The considerations undertaken relate to the area of the public procurement law system, by which is meant the Public Procurement Law, the Law on Concession Contract for Works and the Law on Public-Private Partnership. Outside the research area are other legal forms of implementation of public tasks by government and local government units, such as, for example, administrative agreements, inter-municipal unions, or business activities of local government units.

The research conducted in this dissertation was conducted with a particular focus on the issue of implementing public-private partnership projects in the context of achieving the goals of the concept of sustainable development. The main research area of the dissertation involves the implementation of public tasks using the institution of public-private partnerships. In order to properly cover the specifics of the implementation of projects under public-private partnerships, the comparative context to a limited extent is the implementation of public tasks through traditional public procurement. The above procedure is justified by the fact that currently the execution of public tasks within the framework of the functioning of the public procurement system in Poland takes place in the vast majority under contracts concluded on the basis of the provisions of the Public Procurement Law. Therefore, the consideration, due to the purpose of the legal acts that make up the public procurement system, which is the effective and efficient implementation of public tasks, concerns the Public-Private Partnership Law to examine whether the implementation of projects under public-private partnerships can bring additional benefits, including the achievement of sustainable development goals.

In order to investigate the thesis and research hypotheses, this dissertation used research methods. In the main measure, the formal-dogmatic method was used by applying logical-linguistic analysis. Based on this method, the norms of the applicable law on public procurement, public-private partnerships, and regulations governing sustainable development were analyzed. Serving to the above method, the hermeneutic method was used especially in terms of examining the legal context of the principle of sustainable development by showing the historical, social, economic and political context of this concept. As necessary for this dissertation, the historical-descriptive method of legal research was also used in order to show the relevant context of the changes accompanying the legal environment of sustainable development, as well as the regulations forming the public procurement system. In addition, to a limited extent, the dissertation also uses the comparative method to show the broader context of the application of legal solutions on the grounds of EU regulations. A deeper hermeneutic, historical-descriptive and comparative analysis would go beyond the scope of this dissertation, so the above methods have been used to a limited extent. In the dissertation, the non-linguistic aspect was also examined in order to enable the theoretical and holistic systematization of the issues addressed in this thesis, given the context of the social impact of the legislation. In addition, the sociological method, the economic analysis, the axiological method and the economic analysis of law have been used in the dissertation in the supplementary scope.

The first chapter of this dissertation is devoted to broad issues concerning the principle of sustainable development. The research focuses on capturing the genesis of the functioning of the principle of sustainable development not only on the ground of legislation, but also in the economic, political and sociological context. After all, sustainable development is an issue that operates in many areas of social life, which justifies the identification of an appropriate cognitive context. Further considerations concern the introduction of the concept of sustainable development, which infiltrated the national legal system through its placement in Article 5 of the Polish Constitution, in light of the theory of legal principles. The research is also focused on the issue of the axiology of sustainable development, for which reflections on the genesis of sustainable development were the entry point. In order to determine the scope of the principle of sustainable development, the legal provisions regulating sustainable development in Polish and European law were analyzed. The considerations concern the placement of the provisions obligating the realization of sustainable development goals and their content. The justification of creating soft law regulations on sustainable development at both the national and EU levels was evaluated, as well as the placement of individual provisions in generally applicable laws through the perspective of the effectiveness of individual regulations. Government and EU strategies for implementing sustainable development were also analyzed. Due to the topic of the dissertation, the impact of the COVID-19 pandemic on the current development and implementation of sustainability issues was also partially analyzed.

The subject of second chapter of the dissertation was dedicated to public-private partnership as a legal form of realization of public tasks. The specific transformations that have been made in the evolution of collaborative implementation of ventures by public entities and private partners were analyzed. Considerations of public-private partnership projects were analyzed from the perspective of the specifics and differences of this form of implementation of public tasks on the background of the functioning of the Polish public procurement system. Since the recipients of the norms for the realization of public tasks are public bodies, the role of public-private partnerships in the realization of public tasks was analyzed. The fields in which PPP projects are implemented were also studied, as well as selected features of the functioning of the public-private partnership market in Poland.

The third chapter examines the legal tools for realizing the concept of sustainable development on the grounds of the laws that form the public procurement system. Classical public procurement in the sense of the provisions of the procurement directives, and the Public Procurement Law were indicated as a comparative context for the provisions regulating the

matter of concluding public-private partnerships, due to the fact that the implementation of public tasks concluded on the basis of the provisions of the Public Procurement Law is the most common way of performing public tasks against the background of the other legal acts forming the Polish system of public procurement. In order to demonstrate public-private partnerships as an institution of law enabling the realization of the concept of sustainable development, the different stages of performing public-private partnership projects were examined. The assumption of the considerations undertaken, is to analyze the above issue through the perspective of the consecutive stages of conclusion, implementation and supervision of a public-private partnership agreement. The research is aimed at an evaluation of whether, due to the specificities of concluding a public-private partnership, it can, as a legal form of carrying out public tasks, be particularly favorable to achieving the goals of sustainable development, especially in relation to traditional public procurement. These considerations were also supported by indicating to practical examples of the application of solutions conducive to the realization of the concept of sustainable development through PPP undertakings.

The subject of the final chapter of the dissertation was a comparison of legal regulations on public-private partnerships in selected European countries, relative to the national procedure for concluding public-private partnerships. The subject matter undertaken in the fourth chapter complements the previous one, due to the studied potential of realization of the concept of sustainable development through public-private partnership projects. Selected legal conditions for the implementation of PPP projects in the UK, Germany, France and the Netherlands were examined, due to the fact that they have more experience in the application of public-private partnerships than Poland. A result of this is also the fact that these countries have developed institutional and legal solutions for the implementation of public tasks in the PPP formula. In addition, the functioning of public-private partnerships in the indicated countries has been described in the available materials that were used in the research. Therefore, the identification and analysis of the characteristics of the practice of public-private partnerships in the indicated countries provides a comparative basis for the identification of factors that could hypothetically improve the functioning of the implementation of PPP projects in the Polish legal system.

The research undertaken in this doctoral dissertation has shown that a strategic approach to the spending of public funds is one of the key issues relating to the possibility of achieving purchasing goals through the legal forms for the realization of public tasks, including public-private partnerships. Validation of the research hypotheses adopted in the introduction of the

dissertation made it possible to confirm the thesis that the systemic solutions of national law represent an appropriate subsystem of reference enabling and at the same time securing the realization of the constitutional principle of sustainable development within the framework of projects implemented in the public-private partnership formula. The implementation of public tasks by the use of legal forms arising from the legal acts that make up the system of public procurement, creates the conditions for the implementation of the concept of sustainable development. Projects implemented under public-private partnerships are involved in this process. The efficiency of spending public funds through legal instruments that make up the public procurement system is distinguished by different degrees of formal and legal sophistication. The implementation of public tasks in the formula of public-private partnership can be assessed, due to the time-consuming and complexity of project analysis, as the most difficult and laborious form. On the other hand, however, this approach allows government bodies to comprehensively analyze the possibility of implementing the project in the long term, and as a result, to rationalize the purchases process. Such an approach is desirable in terms of purchasing objectives, because an intelligent procurer who can correctly identify its needs and properly perform pre-realization analyses and conduct a public-private partnership contract, and then properly manage the contract, thereby realizes the goal of efficient and strategic spending of public funds. On the opportunity of projects implemented under public-private partnership, ecological, socially responsible, innovative or health solutions can be implemented, which can have an impact on the achievement of sustainable development goals. Therefore, the formation by the legislator on the normative ground of legal provisions that enable the implementation of the concept of sustainable development is a factor that enables the effective implementation of public tasks. As a result, public-private partnership as a legal form of implementing public tasks can contribute to the efficient spending of public funds and be an instrument through which it will be possible to implement strategies that realize the goals of sustainable development. Considering the above, the legislator should, in the process of lawmaking, take into account the implementation and amendment of legal instruments that enable the expansion of the use of public-private partnerships in the implementation of public tasks.

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