Wrocław, 25th of May, 2023

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Doctoral dissertation summary
Titled: **"The transparency and privacy protection principles within the public procurement procedure.
Considerations in light of the European Union, Polish and German Laws."**

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Human rights protection, especially with regard to personal data, has spawned recently widespread debate. Public procurement area shall not be isolated from this discussion. The usage of public procurement to promote and protect human rights is not well developed. The significant changes in the national public procurement policy should lean towards this direction. The new development shall be focused not only on the well-known value for money principle, but also should take into account human rights' connected principles. These principles could be regarded as a secondary objectives of the public procurement laws. The current normative developments in the area of privacy and trade secret protection seem to promote these secondary objectives. It is a result of the enactment of the General Data Protection Regulation ('GDPR') as well as the Directive 2016/943/WE on the protection of undisclosed know-how and business information (trade secrets) against their unlawful acquisition, use and disclosure but also because of the Environmental, Social and Corporate Governance ('ESG') policies. These normative progresses articulate the direction of the modern public expenditure.

At the same time, this does not mean that the role of the transparency principle should be diminished. The principle of transparency has been and will be crucial. Access to information is rooted so deeply in the democratic society and the concept of good governance, so that the obligation to follow transparency principle remains one of the most significant aspects when it comes to public expenditure. Undoubtedly, the transparency principle supports the adequate applicability of other principles, especially the equal treatment principle of the economic operators. It serves within the internal relations – as far as the participants of public procurement procedure are concerned. Similarly, it applies externally – towards the whole society. Thus is closely linked with the rights exercised by the stakeholders (namely citizens) that should be equipped with the legal measures that enable them to identify and report possible violations of public procurement principles to the competent authorities. At the same time, this obligation incumbent mainly on the public authorities is not an absolute one. Its application is dependent on the interaction with other principles.

Determination whether the transparency principle and the principle of privacy protection could be applied to the same extent within the public procurement procedure constitutes the adopted research objective. The multifaceted intersection between transparency principle and the privacy protection

principle that supports the adopted research objective of the thesis, has not been a subject of a thorough analysis so far. Therefore, the uniqueness of the dissertation is correlated with the innovative concept of the privacy protection principle. The concept of the privacy protection principle hereto comprises namely not only the right to privacy and data protection but also covers right to protect trade secrets. An in-depth study of the relationship between these two principles poses several challenges, including these connected with the effectiveness of the protection of the principles in question. Albeit numerous cases have identified convergence of the values associated with these principles, in the majority of situations exists an inherent conflict between them. The only reasonable and valid solution to resolve this conflict is to strike a right balance between these principles. The proportionality principle is a legal instrument utilized to achieve this goal. In this context, it aims to limit the exercise of governments powers. This is done when these powers are tailored to the goals that are acceptable, articulated normatively and in line with the national as well as international policy. An added value of this thesis is a comparative analysis conducted in light of the following three legal systems: European Union, Polish and German.

The internal structure of the dissertation results directly from the adopted research objectives. To be able to resolve the underlying research objectives, the thesis is divided into 8 Chapters. Moreover, it is possible to extract the three parts of this thesis. In the first part, the author is focused to depict the practical implications of the application of the transparency and privacy protection principle within the public procurement procedure as well the central theoretical concept of the legal rules and principles. Thus the Chapter I has an introductory character and serves to outline the most important definitions, including the definition of the public procurement procedure as well as to identify the most important phases of the public procurement and the existence of the transparency and privacy protection principles within this procedure. Therefore, the intention of Chapter I is to investigate the transparency implications throughout the public procurement procedure. This is done by presenting the different transparency obligations of the contracting authorities that can be discerned from this procedure. Furthermore, it aims to articulate the limits of the research. Nevertheless, this broad approach which aims to depict the problem from the theoretical realm up to the practical implications concentrated on the effectiveness principle, helps to gain a better understanding of what factors should be taken into account when assessing these principles and what are their values underlined. Chapter II explores the central theoretical concept of this thesis, meaning: the notion and the distinction between legal rules and principles. In this chapter the author elaborates on the discrepancies between the legal rules and principles, including its implications for the legal methodology. Additionally, the subject matter of this chapter relates to the relation between the law and morality, especially that of the fundamental rights. These contemplations enabled to draw some theoretical conclusions how to resolve the conflict between the colliding principles by means of the proportionality principle. The proportionality principle is one of the three sub-principles (next to the principles of appropriateness, necessity and proportionality in the narrow sense) that helps to balance the conflicting legal principles.

The theoretically-oriented implications presented in the first part, enable to move towards the second part of the thesis that aims to analyse comprehensively the principles in question. In order to present the normative analysis of the transparency and privacy protection principles, firstly the author focuses on the bigger picture by presenting the whole catalogue of the public procurement principles, then the in-depth understanding of the normative side of the principles is depicted. Finally, the principle of transparency and the privacy protection principle is described from a perspective of the participants of the public procurement procedure. Therefore, Chapter III contains the catalogues of all existing and historically binding public procurement principles. The underlining purpose from the research objectives' angle, is to look deep into the various relations between the principles being assessed and others that are applicable within the public procurement procedure. This facilitates to attain the whole picture of the various aims, values of the legislators in light of the historical policies. Secondly, to further expand the understanding of the principles in question, the thorough analysis of the principles of transparency and the privacy protection principle is presented in the Chapter IV (including the analysis of the textualism, purposivism and the publication-wise context). This allow to sketch the preliminary albeit comprehensive picture of what is the normative and functional context of these principles. Chapter V then explores the remaining part of the analysis presented in Chapter IV, meaning - the analysis from the perspective of the participants of the public procurement procedure. This chapter leans to depict how the obligation to comply with the principles of transparency and privacy is incumbent on the different participants of public procurement procedure as well as what implications are connected with the interests presented by these subjects.

The thorough analysis included in the second part enables to move seamlessly to the practical considerations presented in the third part of the thesis. This part of the study is devoted to the proportionality principle applicability, legal measures available to protect the principles as well as the liability schemes. Hence, the analysis conducted in this Chapter VI aims to explore how the conflict between the assessed principles is solved by the jurisprudence. Noteworthy, the interpretation and application of the principle of proportionality is presented as a legitimate method to restrict the transparency principle, as making available information connected with the privacy protection principle should be regarded in the majority of cases as the violation of the privacy protection principle. The observations from this chapter will imply the different legal measures and the liability regimes depicted in the final two chapters. These considerations help to assess whether the effective protection of principles in question is ensured. To this end, in Chapter VII the author elaborates on the procedural and institutional protection of the considered principles. It offers a nuanced examination of the legal measures and institutional framework that serve to protect the principle of transparency as well as the principle of privacy protection. Whereas, Chapter VIII provides an overview of the liability aspects in case one of the investigated principles is violated. The aim of this chapter is to present different liability regimes in order to ascertain effective protection of the two evaluated principles. The way in which liability framework can contribute to these goals is discussed more in depth there.

The concluding part of the thesis verifies the research objectives as well the most significant findings, comments de lege lata and postulates de lege ferenda. Among the research methods - the most important is the comparative method (including the functional method) and the critical method. As an auxiliary one – the historical method was also used. Several lessons can be gleaned from the analysis of the effectiveness of these two principles in the public procurement realm. The most important one identified is the imbalance that has been identified between the transparency principle and the protection of the privacy protection principle that requires the more extensive evaluation in order to hold public authorities accountable for any violations of the privacy protection principle. This had certain specific implications on the final catalogue of the comments de lege lata and postulates de lege ferenda. The ultimate aim in this context is to establish the adequate oversight over the enjoyment of this privacy protection principle in order to meet national as well as international obligations when governments conduct public procurement procedure or legislate for in the public procurement realm.

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