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## THE IMPORTANCE OF PUBLIC PROCUREMENT FOR THE STRATEGIC OBJECTIVES OF NATIONAL SOCIO-ECONOMIC DEVELOPMENT

### ZNACZENIE ZAMÓWIEŃ PUBLICZNYCH DLA REALIZACJI STRATEGICZNYCH CELÓW ROZWOJU SPOŁECZNO-GOSPODARCZEGO PAŃSTWA

The involvement of the public authorities in socio-economic processes serves to achieve the objectives of the adopted policy of the State (or, respectively, the European Union). The state's policy devised to foster socio-economic development is an instance of active state interventionism. In Polish legislation, this policy has been defined by the legislator as development policy. The aim of this paper is to demonstrate that public procurement is an instrument for achieving the strategic objectives of the development policy, thus drawing on the concept of 'strategic use of public procurement': a particular notion of the role of public procurement in the context of the strategic approach to development. One of the premises here is that a specific public goal – whose achievement is desirable from the standpoint of public procurement law – should serve to achieve the strategic objectives of development policy law. The article underscores the instrumental (albeit crucial) nature of public procurement with respect to state policy. For the purposes of the study, it was assumed that failure to appreciate the essence of using public procurement in the pursuit of strategic development objectives will adversely affect the consistency of public objectives and, consequently, result in incoherent actions. In this context, the author assesses the provisions of the Public Procurement Law, which provides the grounds for the adoption of the national purchasing policy that emphasizes the relevance of linking public procurement with the achievement of state objectives. The article shows that the introduction of the obligation to prepare a state purchasing policy and linking this document with the system of strategic development planning confirms the strategic use of procurement, which should serve the implementation of important public interests.

Keywords: Development Policy Law; strategic planning; development public procurement; state purchasing policy

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Ingerencja władzy publicznej w procesy społeczno-gospodarcze służy osiągnięciu celów przyjętej polityki państwa (czy odpowiednio Unii Europejskiej). Polityka państwa na rzecz rozwoju społeczno-gospodarczego stanowi urzeczywistnienie interwencjonizmu państwowego. W polskim

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ustawodawstwie polityka ta została określona przez prawodawcę jako polityka rozwoju. Celem artykułu jest wykazanie, że instrument osiągania strategicznych celów polityki rozwoju stanowią zamówienia publiczne, nawiązując tym samym do koncepcji „strategic use of public procurement”, a więc szczególnego sposobu postrzegania roli zamówień publicznych w kontekście strategicznego podejścia do rozwoju. Przyjęto, że określony cel publiczny, pożądaný z punktu widzenia prawa zamówień publicznych, służyć powinien osiągnięciu strategicznych celów prawa prowadzenia polityki rozwoju. W artykule zaprezentowano podejście, które akcentuje instrumentalny (choć kluczowy) charakter zamówień publicznych wobec polityki państwa. Na potrzeby badań przyjęto, że brak zrozumienia istoty wykorzystywania zamówień publicznych w realizacji strategicznych celów rozwoju prowadzić będzie do braku spójności celów publicznych, a w konsekwencji braku spójności działań. W tym kontekście ocenie poddane zostały przepisy ustawy Prawo zamówień publicznych stanowiące podstawę przyjęcia polityki zakupowej państwa, w której podkreśla się istotność łączenia zamówień publicznych z osiąganiem celów państwa. Przeprowadzone badania wskazują, że wprowadzenie obowiązku przygotowania polityki zakupowej państwa i powiązanie tego dokumentu z systemem strategicznego planowania rozwoju potwierdza strategiczne wykorzystanie zamówień, które powinny służyć realizacji ważnych interesów publicznych.

Słowa kluczowe: prawo polityki rozwoju; planowanie strategiczne; rozwój; zamówienia publiczne; polityka zakupowa państwa

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## I. INTRODUCTION

Modern economies are entangled in various phenomena which did not occur in the past with such intensity as they do nowadays. This should be attributed to civilizational, technological, environmental and social changes, as well as to various emergencies, including epidemics and armed conflicts in the immediate environment. Consequently, no state remains passive with respect to its economy.<sup>1</sup> In fact, such circumstances provide the state (public authorities) with a justification for active contribution to the shape of socio-economic relations.<sup>2</sup> The involvement of the public authority in socio-economic processes and, consequently, its impact on the socio-economic order serves to achieve the objectives of the policy adopted by that state or, respectively, by the European Union.<sup>3</sup> The state policy to promote socio-economic development (also referred to as economic policy) represents active state interventionism.<sup>4</sup> In Polish legislation, the lawmaker defines this policy as the development policy.<sup>5</sup>

The Act on the Principles of Development Policy (APDP) – the normative foundation which informs the conduct of the development policy – governs the legal aspects relating to a particular public duty, as well as new methods and

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<sup>1</sup> Zdyb (2016): 2.

<sup>2</sup> Rabska (2009): 16.

<sup>3</sup> As part of the current economic system, based on social market economy: Powalowski (2017): 51–62; Kieres (2014): 180–192; Kiczka (2013), 330–343; Grabowski (2013): 4; Blicharz (2013): 27.

<sup>4</sup> Kosikowski (2018): 223.

<sup>5</sup> Act on the Principles of Development Policy of 6 September 2007, consolidated text: Journal of Laws of the Republic of Poland [JL] 2021, item 1057, of 2022 items 1079, 1846.

instruments of state action within the domain of economy. The pursuit of development policy is an example of a comprehensive, specific and distinct area of state tasks: a normatively separate sphere of activity of the public authorities, undertaken at the national, regional and local level.<sup>6</sup> The peculiar nature of this field of public law is reflected not only in the catalogue of entities on which this public duty is incumbent (primarily the Council of Ministers and local government units), but also in the envisioned public objectives of development policy. The normative goal of development policy<sup>7</sup> is to ensure sustainable and balanced development of the country, to foster socio-economic, regional and spatial cohesion, to increase the economy's competitiveness, and to create new jobs on a national, regional or local scale. All these constitute the strategic objectives of national development.

The extent of the impact that the development policy has on the economic and social order – whether in subjective (all entities of the executive power) or objective terms (all areas of socio-economic life), or considering the territorial scope (national, regional and local level) – requires an appropriate formula of cooperation and suitable legislation in order to be implemented. The cooperation in question relies on a legally determined complex of interrelated activities of the bodies involved in the development policy, and takes place in accordance with the adopted development strategies and programmes (acts of strategic development planning).

This paper seeks to demonstrate that the strategic objectives of development policy are achieved also by way of public procurement,<sup>8</sup> drawing on the concept of 'strategic use of public procurement':<sup>9</sup> a particular notion of the role of public procurement in the context of the strategic approach to development.<sup>10</sup> In terms of the current legislation, one of the crucial elements is the normative integration of the objectives and instruments of public procurement law with the objectives of development (nationwide, regional, local, etc.) on the grounds of the systemic APDP. While the role of the lawmaker is to prevent a situation in which the normative instruments are contradictory in terms of the public objectives pursued, the premise that the APDP organizes the economic space determines the assessment of the relationship between the goals of development policy and the objectives of public procurement. This means that a specific public purpose which qualifies as desirable in the light of public procurement law, should serve to achieve the strategic objectives of the development policy law. This translates into slightly different distribution of emphasis than in the common approach, which underscores the strategic importance of public procurement for development rather than its instrumental (albeit vital) role within state policy.

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<sup>6</sup> Kokocińska (2014): 309.

<sup>7</sup> Article 2 APDP.

<sup>8</sup> Kokocińska (2017): 66.

<sup>9</sup> Hettne (2013): 1; Blay (2014): 3; Kahlenborn et al. (2011).

<sup>10</sup> Andhov (2021).

Linking public procurement with the national development policy and the pursuit of public objectives is not a novel idea. Concepts such as ‘instrumentalization of public procurement’, ‘strategic use of public procurement’, ‘sustainable public procurement’ or calls to exploit public procurement to induce the desired economic phenomena are indeed a matter of scholarly discourse. Recent years have seen a change in the approach of the legislators – both EU<sup>11</sup> and national – as the strategic application of public procurement has ceased to be merely asserted in soft law or jurisprudence, having been expressed in normative acts; in fact, the scope is constantly expanding.<sup>12</sup>

One has to ask whether legislative change that aims to affirm the strategic approach in public procurement is actually coupled in practice with development policy. The problem may be simplified and reduced to the following question: is the strategic procurer aware of how their purchasing activities will affect the accomplishment of other goals that they should pursue, the strategic development objectives in particular? In other words, the core issue is the awareness of the procurers that, to a greater or lesser extent, they function in conjunction with other public authorities (including those involved in development policy), which is why their purchasing decisions more or less directly affect the achievement of the strategic objectives of development policy. Failure to appreciate the essence of using public procurement in the pursuit of the strategic development objectives will cause inconsistency of the public objectives and, consequently, incoherent actions. In this context, the following assessment will be concerned with the provisions of the Public Procurement Law,<sup>13</sup> which constitutes the grounds for the adoption of the national purchasing policy; crucially, the latter underscores that linking public procurement with the achievement of state objectives is crucially important. With an approach thus defined, one can take a somewhat different, comprehensive look<sup>14</sup> at the issue of public procurement, namely from the standpoint of the state’s needs specified in the strategic development planning documents.

## II. STRATEGIC DEVELOPMENT PLANNING IN THE PUBLIC SECTOR

Jan Jeżewski defines (administrative) policy as the performance of the legally defined public tasks by the administration in a given sphere of its activity; to that end, it determines the objectives, priorities, means and modes of ac-

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<sup>11</sup> European Commission, Directorate-General for Internal Market, Industry, Entrepreneurship and SMEs (2017).

<sup>12</sup> Council Conclusions on the Development of Sustainable Public Procurement 2022, OJEU of 20.06.2022, C236/02.

<sup>13</sup> Act of 11 September 2019 on Public Procurement Law, JL of 2021, items 1129 and 1598; the law came into force on 1 January 2021.

<sup>14</sup> Panasiuk (2019): 109.

tion, and delineates the anticipated effects.<sup>15</sup> As a result, the entities involved in development policy have to undertake a range of legal and factual actions that will yield strategic development planning documents to be adopted by the competent bodies of public authority. Although the APDP – on which development policy and its planning are based – enumerates the entities responsible for planning, as well as the procedure and forms of such planning, it does not explicitly distinguish its stages. The factual actions which according to Cezary Kosikowski take place as part of the planning process, such as anticipating, predicting, programming and planning (in the higher sense),<sup>16</sup> may be decoded from the content of development policy acts (development strategies and programmes). Considering the adopted concepts of economic planning, it may be inferred that these actions include analysis and evaluations of how the economy functions (including social issues and spatial considerations), determination of the course of development processes through predictions, and programming, which should yield a development concept. Corresponding categories referred to by the legislator include diagnosis of the economic, social and spatial circumstances, subsequent identification of development potential and problems, and indication of strategic development challenges and strategic objectives; also described are the areas and directions of intervention, as well as the measures to achieve the objectives and determine the expected results.<sup>17</sup> Alongside establishing the premises of the financial framework and identifying potential sources of financing, it is vital to devise the implementation system for the strategy (or programme): the organization of its performance,<sup>18</sup> which is defined statutorily as the conditions and procedures applicable to the implementation of the strategy.<sup>19</sup> In their entirety, these planning activities should produce development planning acts (development policy acts): strategies and programmes for development.

The pivotal element in conducting development policy is planning for the future (on a macroeconomic scale according to the APDP), which means deciding on future decisions, forecasting the course of future processes, social and economic phenomena, setting strategic objectives (which are reflected in the tasks of the state, i.e. bodies of public authority), defining the directions of the state's activity (as far as development strategy is concerned) and the manner in which they are to be achieved (as part of programmes, which represent operational-implementing acts). At each level where development policy is pursued – national, regional and local – the public authorities responsible for its conduct are obliged to prepare and adopt development strategies and programmes. The lawmaker establishes the categories of development strategies and programmes, with the former being ranked by priority. Specifically,

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<sup>15</sup> Jeżewski (2004): 315–316; Kulesza, Sześciło (2013): 16–19.

<sup>16</sup> Kosikowski (2018): 195.

<sup>17</sup> Łętowski (1983): 3–34; Bator (1992): 107; Strzyczkowski (1985): 3; Supernat (2005): 461.

<sup>18</sup> Article 12(a) APDP; as implementing acts, programmes provide the details concerning the components of development strategies.

<sup>19</sup> Article 13(a) APDP.

they include the medium-term national development strategy, departmental strategies, spatial strategies, as well as regional and local strategies.<sup>20</sup> This means that the public authority ‘plans the directions of socio-economic development’ by pursuing a development policy. Statutorily, the conduct of the policy is founded on the essential premise of qualified cooperation between public authorities (by virtue of interrelated actions). When introducing appropriate legal mechanisms enabling one to achieve such a state of affairs, it was assumed that the activities should yield a coherent system of strategic planning documents for socio-economic development, primarily by ensuring that development policy acts are consistent with the medium-term development strategy. The coherence obligation applies to all categories of development planning acts, whether regional, sectoral or domain-specific, which is in line with the concept of integrated approach to development.<sup>21</sup>

It would be unreasonable to assume that the conduct of development policy is limited to planning alone. Its realization (implementation) is indispensable, as the state’s actions with respect to the economy are also addressed to actors other than public administration, namely participants in economic and social relations. Therefore, any deliberations on development policy (in its public-law aspect) should take the interactions between the policy and law into account. The legal system sets the boundaries of the policy by providing for the organizational elements of its conduct. It defines the state apparatus responsible, the mechanism and the pertinent legal repertory (including legal forms). At the same time, law is the primary instrument of its implementation; the provisions of positive law are a response to the adopted policy acts (acts of strategic planning for socio-economic development), which means not only exerting an influence but also shaping the socio-economic order through strategic development planning. Consequently, in the pursuit of development policy, legislative acts in the socio-economic sphere can hardly be separated from public planning acts. Michał Kulesza draws attention to this particular interdependence:

Since, under the rule of law, all activities of the public entities can only take place on the grounds and within the limits of the law, normative acts are the backbone of any public policy. However, it should be emphasized that every law stems from a political decision and constitutes its vehicle. It should not be regarded as external to public policy. An enactment is a communication on the content of the current public policy (in addition, of course, to being a formalized method of making that policy binding).<sup>22</sup>

The above demonstrates how important a development policy is, and highlights the necessity of a strategic approach to development and, consequently, to strategic development planning.

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<sup>20</sup> Article 9 APDP.

<sup>21</sup> Grosse (2008): 194; Kokocińska (2019): 139–149 and the literature cited therein.

<sup>22</sup> Kulesza (2013): 17.

### III. PUBLIC PROCUREMENT AS AN INSTRUMENT FOR ACHIEVING THE OBJECTIVES OF DEVELOPMENT POLICY: THE NATIONAL PURCHASING POLICY

The concept of incorporating the strategic objectives of socio-economic development into the policy and practice of public procurement is well established in jurisprudence and in practical application. Following the adoption of Directive 2014/24/EU,<sup>23</sup> which stresses the importance of public procurement as a key development-related instrument, employed to achieve smart and sustainable growth that promotes social inclusion and simultaneously ensures the most efficient use of public funds, stipulations that these aspects be taken into account have gradually penetrated into domestic legislation. The amendments to the previous Public Procurement Law of 2004 introduced legal solutions which aimed on the one hand to improve the efficiency of public spending and, on the other, to create legal conditions for procurement to be used to support common goals, including environmental protection, more effective resource management and increased energy efficiency, combating climate change, and promoting innovation, employment and social inclusion; simultaneously, the best possible conditions for the provision of high quality public services were to be ensured. The strategic objectives integrated into the public procurement system – reflecting in the statutory obligation to promote the environmental aspects (green public procurement), comply with social and ethical standards (socially responsible public procurement) and support innovative goods, services or construction (public procurement promoting innovation) as part of public procurement – were far from being systemic solutions.<sup>24</sup> Public procurement law lacked comprehensive provisions linked to the strategic development goals of the state (and the European Union). This shortcoming should be seen not only in the light of inadequate normative framework for the achievement of strategic development goals; after all, the solutions which would enjoin cohesive actions of individual contracting authorities that pursue state policy objectives are also absent.

Assuming that the legal solutions underlying the public procurement system should serve to accomplish the goals stated in the APDP and defined in state policy acts, it was necessary to introduce a normative mechanism which serves to deliver them by way of public procurement law as well. Therefore, the performance of tasks in various areas of development-oriented state activity should be appropriately structured. The correct approach consists in coherent, coordinated and interrelated mechanisms of cooperation between public administration bodies, so that public tasks and strategic public goals are accomplished efficiently and effectively. Hence the call for such legal solutions which adopt a strategic planning perspective, which is addressed not only to the lawmaker, but also to the key stakeholders in the public procurement

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<sup>23</sup> Directive 2014/24/EU of the European Parliament and of the Council of 26 February 2014 on public procurement and repealing Directive 2004/18/EC, OJEU L 94/64, 28.3.2014.

<sup>24</sup> Kania (2018): 511–532.



market, whose activities should contribute to the pursuit of strategic goals of the state. The goals, as well as suitable strategies and programme documents, are to be set and drawn up by entities with the status of contracting authorities, which should thus align their own objectives and public procurement with the pursuit of the strategic objectives for national development. The above prompts one to formulate research problems thanks to which it may be determined whether this function is fulfilled by the new instrument introduced under the PPL: the national purchasing policy, and whether the application of the new solutions designed to structure and coordinate the purchasing policy – and thereby put the Polish public procurement system in order – will ensure consistency with strategic development goals.

The obligation of the Council of Ministers to adopt the national policy arises under Article 21 of the PPL. It is updated every four years by the minister in charge of economic affairs, who is responsible for drafting the document. According to the statutory definition, ‘the national purchasing policy defines the priority actions of the Republic of Poland in the area of public procurement, as well as the desired direction of actions by the contracting authorities with regard to the awarded contracts, which includes in particular the purchase of innovative or sustainable products and services whilst allowing for standardization; life-cycle costing; corporate social responsibility; propagation of good purchasing practices and tools; application of social and health-related aspects.’<sup>25</sup> The definition of the purchasing policy highlights two essential elements. First, activities are to be organized and coordinated also by means of setting national priorities in procurement. Second, it explicitly acknowledges strong links between the procurement system and sustainable (strategic) development goals. In addition, it follows from Section 2 of that provision that their connection with the strategic objectives resulting from development policy has been augmented by means of a statutory obligation; specifically, when determining the actions of the government administration, procurement policy must take into account the objectives and directions of the medium-term development strategy. Thus, the legislator decided to implement a strategic approach to public procurement.

With respect to the statutory solutions concerning the design of the public procurement policy – manifesting in the national purchasing policy – it should be noted that this document should be classified as a policy act. As the purchasing policy is prepared and adopted by virtue of a resolution of the Council of Ministers, the document cannot be treated as a source of universally applicable law. It is an act of internal law, binding on the subordinate structures. Legal qualification of development policy acts has already been the subject of scientific debate<sup>26</sup> and, against this background, the deliberations should be considered relevant. However, from the standpoint of legal analysis, substantial importance should be attached to the place of the national purchasing policy among strategic planning documents (in the broad sense).

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<sup>25</sup> Article 21 PPL.

<sup>26</sup> Kokocińska (2016): 25–37.



Direct links between the purchasing policy and development policy acts are exclusively evinced by the wording of Article 21(4) PPL, which imposes an obligation to ensure consistency of the purchasing policy with the medium-term national development strategy, which ranks the highest in the hierarchy of planning acts. Given the requirement of creating a coherent system of strategic planning documents, the absence of a statutory reference to the systemic regulation of the APDP should be deemed a flaw. The nature of the purchasing policy and its place in the system of planning documents should follow explicitly from the statutory provisions. In the author's opinion, this deficiency has resulted in an incorrect qualification of the national purchasing policy as a development strategy, referred to in Article 9(3) APDP.<sup>27</sup> The document should constitute a public policy which, in line with Article 5(7)(b) APDP, means a document that sets out the essential conditions, objectives and directions of the country's development in social, economic and spatial terms in a given domain or on a particular territory, which follow directly from the development strategies stated in Article 9(2) and (3) APDP. Just like development strategies, programmes and programming documents, public policies provide the basis for the conduct of development policy. However, the place and function of each type of strategic planning act are different, being determined, for example, by the scope of their regulation (including their objectives) and the mutual relations between them.

The erroneous qualification of the current national purchasing policy may be attributed to several factors, not necessarily legal ones. First, the Resolution of the Council of Ministers on the Adoption of the National Purchasing Policy for 2022–2025<sup>28</sup> explicitly invoked the development strategy referred to in Article 9(3) APDP. Second, one failed to adopt a systemic perspective and included the purchasing policy as an instrument of the strategic approach to development in various areas of socio-economic life. Public procurement is not a distinct area or field of the economy that requires a separate development strategy. Development strategies define the elementary conditions, objectives and directions of development, relating to sectors, fields, regions or spatial development. Public procurement is merely an instrument used to accomplish the strategic objectives of the state as indicated in the medium-term national development strategy and the strategies cited in Article 9(3) APDP. As its main premises suggest, the purchasing policy 'is an instrument serving to link the outlays involved in public procurement with the pursuit of other policies and strategic objectives of the state. Through appropriate orientation, as well as enhancement of the necessary competence resources of the contracting authorities, public procurement is to become a tool supporting economic development, the potential of the SME sector in particular, innovation growth, and implementation of social, health and environmental policies.'<sup>29</sup> Also, the scope

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<sup>27</sup> Jarnicka (2022).

<sup>28</sup> Resolution no. 6 of the Council of Ministers of 11 January 2022 on the Adoption of the National Purchasing Policy, *Monitor Polski* [Monitor of Poland] 2022, item 125.

<sup>29</sup> From the rationale of the National Purchasing Policy.

of regulation of the national purchasing policy does not justify its qualification as a development strategy. This means that the national purchasing policy should be a policy act which serves to deliver the public objectives set out in the development strategies.

#### IV. CONCLUSIONS

Over the past 20 years, strategic development planning has become ubiquitous in the public sector (mainly under the influence and in consequence of the implementation of EU legislation pertaining to programming expenditure from EU budget and financial planning). Public planning should now play a key role, so that public authorities may reliably anticipate and manage change, as well as effectively address new problems. In other words, decision-making needs to be reoriented; it is necessary to depart from the segmented, episodic, 'ad hoc' action or short-term problem-solving in favour of a broader strategic development planning process that involves continuous activities of the public authorities, inclusive of crisis scenarios. In order to achieve such an approach in the pursuit of development policy and public planning, coherent action is indispensable, also in terms of consistent objectives. Furthermore, cooperation of the public authorities is essential.

The introduction of the national purchasing policy under the PPL and the fact that it has been linked with the principles of strategic development planning set out in the APDP clearly demonstrates that procurement is to be utilized strategically. Public procurement can and should serve valid public interests, including strategically important social and environmental objectives. It may be noted that the national purchasing policy not only allows the objectives and state activities to be aligned but may also indirectly influence other participants in the market. The document sends a signal to the strategic contracting authorities that they are expected to pay greater attention to individual procurements in terms of their potential to deliver strategic goals, whereas entrepreneurs (as it is asserted) should gear their competences towards the achievement of the same.

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