

THE ADMINISTRATIVE LEGAL REGIME OF VASIL LEVSKI NATIONAL MILITARY UNIVERSITY AS A CONTRACTING AUTHORITY OF PUBLIC PROCUREMENT

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Abstract: The report examines the National Military University's personable as a public organization – a contracting authority of public procurement in Chapter 7 item 3 of the Law of Public Procurement of the Republic of Bulgaria. The emphasis is placed on the administrative legal stage on imposing the public procurement prior to concluding the agreement.

Keywords: Public procurements; a public organization; contracting authority;

This report dwells on the analysis of Vasil Levski National Military University as a commissioner of public contracts. In the modern development of the country, public procurement is a necessary element of the management of public finances and other resources of the public sector, and which also functions not only in order to meet social needs, but also of ensure state regulation of the economy.

Public procurers are interesting to study in terms of their dual role in procurement. Public procurement is a complex set of facts, consisting of a civil and an administrative-legal phase. In the first phase, while carrying out the statutory procedures, the contractor is determined and the main elements of the future contract are specified. In the second one, the contract is signed and implemented. Therefore, the commissioner of public procurement falls under the dual legal system - in the first phase, in the selection of a contractor, he has the functions of

administrative authority, while in the second phase - as contractor under the contract – of a civil entity. [1]

Clarification of whether a person or an organization is a "commissioner of public contracting" has important practical significance, since it is the quality of a commissioner that that will constitute whether a person is obliged to comply with the provisions of the Public Procurement Act. The conclusion of a contract without tendering procedure despite the grounds that call for it and the unlawful application of the exceptions in the law, would lead to the invalidity of the contract, and it is grounds for liability claims

against the assignor. [2]

Art. 7, item 3 of the Public Procurement Act [3] determines public organizations as public procurement assignors. This concept was first introduced in our legislation with the adoption of the law in 2004. Under the legal definition of § 1, item 21 of the Supplementary Provisions of the PPL “ a

public organization " is a legal person, which irrespective of his industrial or commercial character, has been created to meet public interests and for which any of the following conditions applies:

a) more than half of its revenue for the preceding financial year was financed from the state budget, the budget of the state social insurance or National Health Insurance Fund, from municipal budgets or entities under Art. 7, item 1 or 3 of the PPL;

b) more than half of the members of its management or supervisory authority are determined by the entities referred to in Art.7, item 1 or 3 of the PPL;

c) it is subject to management supervision by the entities referred to in Art .7, item 1 or 3 of the PPL .

For clarity, the law specifies that "management control" occurs when a person may in any way exercise a dominant influence over the activities of another person.

Similarly, the classical entities referred to in Directive 2004/18 / EC [4] of the European Parliament and of the Council from 31 March 2004 on the coordination of procedures for the award of public construction contracts, public services and supply:

'Contracting authorities' means the State, regional or local authorities, public bodies or associations of one or several such authorities or one or several public authorities. "Public body" means any body that:

a) has been established for the specific purpose of meeting needs in the general interest, without being industrial or commercial in character ;

b) is recognized as a legal person or entity, and

c) is mostly financed by the state, regional or local authorities or other public authorities; or is subject to

management supervision by those bodies; or has an administrative, managerial or supervisory board, more than half of whose members are appointed by the State, regional or local authorities or other public bodies.

An analysis of the Directive sets out three elements, which a public organization must be in compliance with:

- Meeting needs in the general interest, without having an economic purpose;

- To be a legal entity;

- To be funded by the state or municipal budget.

Similarly, in the analysis of national legislation (Public Procurement Law) the following requirements are recognized:

- To be a legal entity

- To have been created to meet the public interest

- To meet any of the following requirements:

• To be financed more than 50 percent by the state budget, the budgets of state social security, national health insurance fund, municipal budgets or entities under Art. 7, para 1 or 3 ;

• More than half the members of its management bodies to be appointed by the entities referred to in Art. 7, para 1 or 3;

• To be subject to management supervision by the entities referred to in Art. 7, item 1 or 3.

This definition creates a vicious circle, as the last requirement to be a public legal organization - assignor under art. 7, item 3 of the Public Procurement Law, sets forth that the same organization must be financed or subject to control by another public legal organization - assignor. In that case, the initial public organization should be

financed or should be subject to control by an entity under Art. 7, item 1 of the Public Procurement Law. In my opinion, it is necessary for the legislature, de lege ferenda, to refine the legal definition.

According to Art. 6, para 1 of the Higher Education Act [5], the school of higher education is a legal entity with the following scope of activity:

1. training of specialists, capable of developing and implementing scientific knowledge in different fields of human activity;
2. increasing the qualification of specialists;
3. developing of science, culture and innovation.

Vasil Levski National Military University was created by an Act of the National Assembly of the Republic of Bulgaria for the transformation of Vasil Levski Land Forces Academy, Panayot Volov Artillery and Air Defense Academy and G.Benkovski Air Force Academy into Vasil Levski National Military University [6]. Paragraph 3 of the Act sets forth that the scope of activities of Vasil Levski National Military University includes:

- a) training towards acquiring academic degree in specialties from the professional field "Military Warfare" as well as in specialties in the areas of natural, social and technical sciences ;
- b) training towards additional qualification;
- c) carrying out scientific and applied research;
- d) activities related to the defense of the country, assigned to by the Minister of Defence.

Thus, comparing the provisions of the law and relevant provisions of the Act for the establishing of the University, it can be decidedly concluded that the National Military, as an institution of higher education, meets

the first two criteria for being considered a public procurement assignor.

The third criterion comprises three separate prerequisites and it suffices that an organization meets any of them in order to be recognized as a commissioner of public procurement.

The first prerequisite is more than 50 percent of the funding to be provided by the state budget, the budgets of the state social insurance, the national health insurance fund, municipal budgets or entities under Art.7, para 1 or 3.

According to § 1, item 1 of the Supplementary Provisions of the Accounting Law [7] "Budget enterprises " are all persons applying budgets, accounts for funds from the European Union and accounts for foreign funds under the Public Finances Law, including the National Insurance Institute, the National Health Insurance Fund, state universities, the Bulgarian Academy of Sciences, the Bulgarian National Television, the Bulgarian National Radio, the Bulgarian Telegraph Agency, and all other entities considered budget organizations under the provisions of § 1, item 5 of the Public Finances Law." According to Article 11, para 9 of the Public Finances Law [8], state universities have the status of second level spending units. As a state university, Vasil Levski National Military University is included in the 2014 State Budget of the Republic of Bulgaria [9], where Art. 11, para 4 sets forth that it will receive transfers from the Ministry of Defence.

Consequently, Vasil Levski National Military University complies with the first of the three prerequisites in the third criterion to be recognized as a public procurement assignor.

For the sake of completeness we will look at the other two. The second one is that more than half the members

of its management bodies are appointed by the entities referred to in Art. 7, para 1 or 3. Under section 8 of the National Assembly Act establishing the University, the governing bodies of Vasil Levski National Military University are the General Assembly, the Academic Council and the Commandant. While the General Assembly and the Academic Council are elected in accordance with the general procedure for the constitution of these bodies under the Higher Education Act, the Commandant (Rector) of the University, as provided in section 11 of the National Assembly Act, is a professional military officer, who is appointed and dismissed under the provisions of the Defence and Armed Forces Law of the Republic of Bulgaria [10]. His powers are not terminated at the end of the mandate of the General Assembly. According to the established procedure in the Defence and Armed Forces Law of the Republic of Bulgaria, the appointment and dismissal of the Commandant of Vasil Levski National Military University is carried out through a decree of the President of the Republic of Bulgaria, who, in his turn, is considered commissioner of public procurement under art. 7, item 1 of the Public Procurement Law. Thus, Vasil Levski National Military University meets the second prerequisite in the third criterion of the legal definition of a public procurement assignor.

The third prerequisite is to be subject to management control by the

entities referred to in Art. 7, item 1 or 3. Under the provisions of art. 94, para 3 of the Defence and Armed Forces Law of the Republic of Bulgaria, the control over the drafting and implementation of the budgets of the military academies and military institutions of higher education is carried out by a procedure, established by an act of the Minister of Defense, and in accordance with art. 95, para 1 of the same law, the regulations for the organization and activities of the military academies and military institutions of higher education shall be adopted by the Council of Ministers on the proposal of the Minister of Defense in consultation with the Minister of Education and Science. Since the Vasil Levski National Military University is a military institution of higher education under the law, these provisions fully relate to it. Therefore, there is a management control by the Minister of Defence, who is a procurement assignor under art. 7, item 1 of the Public Procurement Law. This confirms the compliance with the third prerequisite of the third criterion of the legal definition to be recognized as a public procurement commissioner.

To summarize the abovementioned, we can conclude that Vasil Levski National Military University meets all prerequisites set forth by the Public Procurement Law and Community law, so that it is qualified as a public procurement assignor.

References:

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[3] State Gazette, issue 28 as of 06.04.2004 and subsequent amendments

- [4] OB L 134, 30.4.2004 p. 114
- [5] State Gazette, issue 112 as of 27.12.1995 and subsequent amendments
- [6]] State Gazette issue 62 as of 25.06.2002
- [7]] State Gazette, issue 98/2001
- [8] State Gazette, issue. 15 as of 15.02.2013
- [9] State Gazette, issue 109 as of 20.12.2013
- [10] State Gazette, issue 35 as of 12.05.2009