

THE CONCEPT OF CONTRACTING AUTHORITY UNDER PUBLIC PROCUREMENT LAW AND PROBLEMS OF ACQUISITION OF SUCH STATUS IN NATIONAL LAW OF THE REPUBLIC OF LITHUANIA

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Abstract

Over 7,500 entities having status of contracting authority operate in the Republic of Lithuania. The status of contracting authority binds the body to buy goods, services and works necessary to carry on its functions, following the Law on Public Procurement of the Republic of Lithuania, which has been harmonised with the requirements of the European Union legislation. For the organisation, the status leads to a significant additional administrative burden and difficulties in arrangement of activity, therefore designation of the contracting authority's criteria and application procedures thereof must be clear and unambiguous. Practice, however, raises a number of questions regarding acquisition of the status, which indicates a lack of efficacy of existing assignment procedure. In this Article, while analysing the legal provisions governing the issues of contracting authority's status acquisition and loss, the concept of the contracting authority is being purified as well as ways to solve the most common problems arising in the practice of body's inclusion into the list of contracting authorities are being identified.

Keywords: Contracting Authority, Public Procurement, EU Public Procurement Directives, European Court of Justice

Introduction

According to the figures from the Public Procurement Office (2012), Over 7,500 entities having status of contracting authority operate in the Republic of Lithuania. They are obliged to buy goods, services and works necessary to carry on their functions, following the Law on Public

Procurement of the Republic of Lithuania (hereinafter referred to as LPP), which has been harmonised with the requirements of the European Union (hereinafter referred to as the EU) legislation. Attribution of the status leads to a doubtless burdening of body's activity as well as requires additional time, financial, and human resources, so generally undesirable in cases where it can be avoided. However, evaluation of existing practice in the Republic of Lithuania shows very wide range of contracting authorities, and as for attributing specific body to the list of contracting authorities, both the Public Procurement Office and courts tend to interpret it expansively, so enlarging the range of contracting authorities. This problematic situation demands to develop a system for inclusion in the list of contracting authorities that would allow clear and unambiguous identifying of unprejudiced criteria for specific body to be enlisted as contracting authority. Analysis of public procurement legal relations case law shows that many disputes arise from authority's duty to apply rules of the law on public procurement (for instance, cases 3K-3-519/2011, 2-1337/2013, 2-3185-656/2014 etc.), what enhances the relevance of this topic on practical level.

Despite the relevance of the subject, so far this issue in Lithuania has not won much scientists' attention. When evaluating novelty of the survey in EU level, it is worth mentioning C.Clarke (2012), Ch.Bovis (2008), S.Aerowsmith (2011) and other authors that analysed the concept of contracting authority and criteria thereof set by the EU law as well as relevant case law of Court of Justice of the European Union (hereinafter referred to as CJEU). However, the present survey is unique for identifying practical problems relevant to the implementation of the EU public procurement rules in national law together with defining the concept of contracting authority on theoretical level, what is new and useful in practical terms.

Firstly, this Article analyses legislation governing acquisition and loss of status of contracting authority in order to refine the concept of contracting authority. Later it identifies criteria and the main problems of application thereof for assignment of contracting authority to classical sector that are currently applied in the Republic of Lithuania. The study was performed using document analysis, comparative, and generalisation methods. It is expected that the results will be valuable for investigation of development and improvement of the requirements of the EU and national legal systems for public procurement using the comparative method.

I. The Concept of Contracting Authority and its development in the national law of the Republic of Lithuania

The LPP of the Republic of Lithuania does not provide for the specific definitive concept of the contracting authority; however, it lists some

categories of entities subject to assignment to contracting authority. Systemic analysis of the definition of public procurement provided for in Paragraph 32 of Article 2 (public procurement shall mean the procurement of supplies, services or works performed by the contracting authority subject to the rules set forth in this Law, the object of which shall be to award a public sales-purchase contract) obviously shows that exclusively procurements made by contracting authority shall be deemed public ones. Therefore contracting authority is a necessary subject for legal relation of public procurement, in the absence of which certain legal relations could not be qualified as arising from public procurement.

Contracting authority in the LPP of the Republic of Lithuania is a concept describing contracting authorities of both classical and utilities sector. In the public procurement legislation of the EU, several most widely concepts for definition of the contracting authority are used: contracting authority and contracting entity. The separation of these two entities is determined by the factor of Contracting Authority being identified as belonging to classical sector and contracting company meaning only the utilities sector contracting authority. Division of contracting authorities into the two parts based on the activity is grounded by the need to allow greater flexibility in procurement procedures and higher procurement thresholds for entities operating in the utility sector. As from the adoption of the first EU legal acts regulating public procurement such division of contracting authorities has firmly established itself in both community and national law levels. In the scope of the present survey, attention is paid to acquisition of contracting authorities status by entities belonging to classical sector only.

Provisions of the LPP regulating entity's assignment to contracting authorities has travelled quite long evolutionary way since the first wording of the law until the norms existing today. The initial wording of the LPP, adopted on August 13, 1996 assigned the status of contracting authority to public authorities, carrying out procurement the value exceeding LTL 25,000 under the condition that the procurements are financed with the funds of the State Budget, municipal budgets, the budget of the State Social Insurance Fund, and other resources of the state funds, funds received in the name of government institutions as charity or any other support, as well as foreign loans received in the name of the State or guaranteed by the State. In 1999, the Law was redrafted amending the threshold for public procurements which value was set at LTL 75,000 for goods or services and LTL 300,000 for works during the fiscal year. Compulsory Health Insurance Fund was added to the list of founding sources. The next wording, entered into force the same year, included the Bank of Lithuania as contracting authority as well as public undertakings operating in the water, energy, transport and telecommunications sectors as well as enterprises which have had the

special or exclusive right of operation in the sphere granted to them by the state or municipality, when such procurement is financed with the funds of the above enterprises for the purchases of products or services the value whereof during the fiscal year was not less than LTL 1.8 million or public works the value whereof was not less than LTL 1 million. The wording that entered into force on March 1, 2003 contained the new Article 3 intended for contracting authority status. It stated that following the general rule a contracting authority should be: 1) any state or local authority; 2) any public legal person meeting the conditions set forth in Paragraph 2 of this Article; 3) any association of public legal persons specified in subParagraphs 1 and/or 2 of this Paragraph. The second Part of the same Article stated that a public or private legal person (with the exception of state or local authorities) shall be deemed to be a contracting authority, if all or part of its activities is intended for meeting the needs of general interest, not having an industrial or commercial character, and meets at least one of the following conditions: 1) the activities thereof are financed, for more than 50 per cent, with state or municipal budget resources, or with other resources from state or municipal budgets, or with the resources of other public or private legal persons specified in this Paragraph; 2) it is subject to management (supervision) by the state or local authorities, or other public or private legal persons specified in this Paragraph; 3) it has an administrative, management or supervisory body, more than half of whose members are appointed by the state or local authorities or by public or private legal persons specified in this Paragraph. Parts 3 and 4 of Article 3 of the new wording imposed a duty for the Government of the Republic of Lithuania or an institution authorised by it shall approve and update the lists of contracting authorities. In the same year the Article was amended specifying that contracting authority shall be not only public but also private legal entity meeting the requirements set forth in Part 2 of Article 3 (and by analogy associations of private legal entities). Respectively, Part 2 was amended. In 2006, the new wording of the law dedicated Article 4 for the issue of belonging to the contracting authorities with a novelty: entities providing postal services were assigned to contracting authorities acting in utilities sector (instead telecommunications entities). In 2009, Article 4 of the LPP was supplemented by Part 5, establishing contracting authority's duty to register in Central portal of public procurement. In 2012, amendment of Article 4 of the LPP was adopted and caused much debate and criticism. Overcoming the President's veto, the exception for political parties was adopted, which allowed them, regardless of their compliance with item 2 of Part 1 of Article 4, waiving the LPP for the procurements. This provision was repealed in 2013 and came into effect on January 1, 2014.

In the EU public procurement law, the term ‘Contracting authority’ is a decisive element of the public procurement legal framework, as it determines the applicability of the relevant rules (Bovis, 2008). The new procurement directive (2014/24/EU) for the first time in its Article 2 defines contracting authority together with other meanings, specifying that ‘contracting authorities’ means the State, regional or local authorities, bodies governed by public law or associations formed by one or more such authorities or one or more such bodies governed by public law. Categories used in this term are interpreted this way; however, no changes in the contents are seen in comparison with invalidated directive 2004/18/EU. Using comparative method of analysis of the provisions of national law and requirements of the EU Directive on Public Procurement (2014) it can be seen that differentiation of contracting authority of the classical sector into three groups comply with directive’s regulations.

According to Paragraphs 1-4 of Part 1 of Article 2 of the Directive on Public Procurement 2014/24/EC, contracting authorities are 1) the State, regional or local authorities, 2) bodies governed by public law, 3) associations formed by one or more authorities or bodies governed by public law. Concept of the State covers not only the executive authority of the state, but all state entities i.e. state administrations and regional or local authorities. The term ‘the state’ also encompasses all of the bodies that exercise legislative, executive and judicial powers (SIGMA, 2011). In general it corresponds to the wide meaning of any state or municipal authority. Authority subject to public regulation belongs to another category. Following the Directive it means any authority: a) established for the specific purpose of meeting needs in the general interest, not having an industrial or commercial character; b) having legal personality; and c) financed, for the most part, by the State, regional or local authorities, or by other bodies governed by public law or are subject to management supervision by those authorities or bodies; or have an administrative, managerial or supervisory board, more than half of whose members are appointed by the State, regional or local authorities, or by other bodies governed by public law. It is important to pay attention to the fact that a body has to meet all requirements in order to be deemed contracting authority (as it was noted in CJEU cases C-380/98, C-353/96).

Having reviewed changes in legislation requirements for contracting authorities to be deemed bodies of classical sector can be summarised. The nature of the body plays the decisive role here. In Lithuania, contracting authority is: 1) any state or local authority; 2) any public or private legal person meeting the conditions set forth in LPP; and 3) any association of authorities specified in previous Paragraphs. In EU legal framework contracting authorities are grouped in a slightly different way and the status

of contracting authority is attributed to the following: 1) the State, regional or local authorities, 2) bodies governed by public law, 3) associations formed by one or more authorities or bodies governed by public law. Differences in national and EU legal definitions cause the need for more detailed analysis of assignment of entities in each group to contracting authority.

Ii. State and municipal institutions as contracting authorities

The concept of state and municipal authority is not defined in the legislation of the Republic of Lithuania. The Constitution uses concepts of state institution, public institution, institution of state power and governance, self-government institution, however does not reveal their meaning. The Law on the Government of the Republic of Lithuania mentions concepts of ‘state institution’ and ‘municipal institution’; the Law on the President mentions only the term of ‘institution’; Statute of the Parliament (Seimas) refers to ‘State government and administration institutions’, the Law on Courts uses ‘institutions of state government’ and ‘Institutions of judicial self-governance’. Such variety signals about the use of dissimilar definitions in legislation together complicating assignment of contracting authority status issue.

In the interpretation of Lithuanian Supreme Court (2009) this concept is comparable with the public authorities. The same ideas are presented by authors of the LPP commentary (2012). According to this opinion, following Paragraph 1 of Part 1 of Article 4 of the LPP, all public administration bodies defined in the Law on Public Administration as ‘a collegial or one-man entity of public administration authorised in accordance with the procedure laid down by this Law to adopt administrative regulations’ should be deemed contracting authorities. Systemic analysis of public administration subjects named in parts 3 and 5 of Article 4 of the Law on Public Administration leads to a conclusion, that status of contracting authority shall be assigned to state institutions or entities, state companies, and public institutions owned in full or in part by the state and authorized to provide public administration services. The same for other bodies authorised to implement public administration. As for municipal authorities, status of contracting authority shall be assigned to municipal institutions or entities, municipal companies, and public institutions owned in full or in part by municipality and authorized to provide public administration services. The Supreme Court of Lithuania states that it is not necessary for a body to formally belong to the structure of state or municipal administration in order to recognize it as contracting authority (2009). This provision is supported by the EU procurement law doctrine as well. According to S.Arrowsmith, the concept of a body governed by public law is intended to bring within the Public Sector Directive all entities that are not part of the “traditional state”

apparatus of government departments and local authorities, but are nevertheless closely dependent on the state such as there is a risk that they will be influenced to discriminate in their purchasing (2008). This is confirmed by CJEU case law, following which the contracting authority is to be interpreted in accordance with the functional approach. It is stated that a body whose composition and functions are laid down by legislation and which depends on the authorities for the appointment of its members, is assigned to state apparatus (Case 31-87). So, functional approach means that classifying whether a particular organisation is attributable to the contracting authority, the main focus should be set to the functions thereof, and whether its nature is public administration, or related to it; such an entity should follow the provisions of public procurement law for its purchasing procedures. Such a wide interpretation of the concept of state and municipal authority requires attributing various public institutions, state and municipal companies which by its nature does not meet state and local government authorities in the strict sense of the concept, to contracting authorities mentioned in Paragraph 1 of Part 1 of Article 4 of the LPP. In order to define contracting authority in more clear and harmonized with concepts in the other legal acts of the Republic of Lithuania way, the term 'public administration body' should be considered for the use in the LPP instead of 'state and local authority'. This would avoid the need to interpret the latter concept widely, which would simplify the matter of public administration body qualification as contracting authority.

III. Public and private legal entities attributable to contracting authorities according to part 2 of article 4 of the lpp

If the first group of authorities generates problems only due to interpretation of the concepts and inevitable need to rely on CJEU case law in order to apply correctly the analysed legal provisions, then attribution of particular entity to the second group is more troubling and requiring more detailed discussion as in the EU law so in national law. This is supported by the professionals of EU public procurement legislation. According to Ch. Clarkes, state, regional and local authorities are normally easy to recognize, however, the role of other bodies or associations are sometimes difficult to determine whether they fall within the legal framework of a 'Contracting authority' (2012).

Public and private entities corresponding to the criteria set in Part 2 of Article 4 of the LPP compose very dynamic segment of contracting authorities and according to S. Jurgelevičienė, there is a number of entities, under various circumstances, eg., when changing nature of the activity, getting funding from the state budget etc., constantly decide whether they must follow the requirements for procurement procedures listed in the

(2005). It is possible situation when acting for a long period of time, the status of the entity made several changes depending on compliance with the criteria in the beginning of financial year.

The Law on Public Procurement states that those public and private legal entities shall be assigned to contracting authorities meeting the following two conditions: 1) all or part of its activities is intended for meeting the needs of general interest, not having an industrial or commercial character, and 2) meets at least one of the following conditions; a) it is subject to control (management) by other contracting authorities; b) the body is financed, by more than 50 per cent, with other contracting authorities; c) it has an administrative, managerial or supervisory board, more than half of whose members are appointed by the other contracting authorities. Systemic analysis of criteria set in the LPP it is obviously clear that the focus shall be given to the character of contracting authority's activity (meeting the needs of general interest, not having an industrial or commercial character) and source of financing / control as well.

In the Procurement Directive, as equivalent to national public and private entities category, the concept of bodies governed by public law appears. In grammatical point of view, these two categories are clearly not identical. The opposite view is shared by the Supreme Court of Lithuania, which in the review indicates that the concept used in national law corresponds to the term used in the directive (2009). It is advisable to unify the terms, given the crucial role the Directive gives to the regulation of entity's activity by public law, and national law uses non-constricted definition, which entails assumptions for incorrect assessment of the status of the entity.

As for bodies whose activity is governed by public law, it is necessary to disclose their attributes. According to the Directive, it means any body: a) established for the specific purpose of meeting needs in the general interest, not having an industrial or commercial character; b) having legal personality; and c) financed, for the most part, by the State, regional or local authorities, or by other bodies governed by public law or are subject to management supervision by those authorities or bodies; or have an administrative, managerial or supervisory board, more than half of whose members are appointed by the State, regional or local authorities, or by other bodies governed by public law.

Bringing requirements of national law with EU law, it is necessary to examine the interpretation of the conditions identified in the EU legal doctrine and jurisprudence of the CJEU. Laconic provision of the Directive on meeting the general interest has been interpreted by the CJEU that rated it by two different but fundamentally related prisms: (1) whether the organisation is established to meet needs in the general interest and (2)

whether those general interest needs have an industrial or commercial character (in order to satisfy the definition the general interest needs must not have an industrial or commercial character) (SIGMA, 2011). „Needs in the general interest” are generally needs that are satisfied otherwise than by the availability of goods and services in the marketplace and that, for reasons associated with the general interest, the state chooses to provide itself or over which it wishes to retain a decisive influence (SIGMA, 2011). Here, we see a fundamental mismatch of concepts between the contracting authority activity’s purpose of meeting ‘public interest’ used in the LPP and ‘general interest’ referred to in the Directive what should grammatically be translated to the Lithuanian language as ‘common interest’ (in Lithuanian “bendrasis interesas”) or ‘common need’ (in Lithuanian “bendrasis poreikis”). Additional criterion provided is industrial or commercial character of the general interest, which is usually associated with a profit-making. However, the CJEU does not agree with such a narrow perception and states that in determining meeting of the public interest, which is an industrial and commercial nature, one should not rely solely on definition of general purpose of private entities (profit making) or their activities, described as an economic and commercial (Case C-283/00).

The criterion of meeting general interest is not absolute, as the CJEU case law shows that when meeting general interest, having commercial or industrial nature, the entity does not become a contracting authority. The CJEU has stated that an entity whose activities meet the general interest (in this particular case it was the event organisation), but it does not meet the non-commercial and non-industrial criterion, because while it is a non-profit making, but is administered according to the principles of cost-effectiveness and price-competitive, so it can not be recognized as the contracting authority (Case C-233/99). National courts decided in a similar way in a very similar case (Case 2-1337/2013).

In practice, most problems usually arise in assessment of what part of public or private legal entity's activities must be devoted to the public interests. In addition, the similar question arises regarding the assessment of minimal amount of the part devoted to the public interests, not having an industrial or commercial character. Notably, in practice the issue of contracting authority status is interpreted extensively, i.e. when in doubt whether the particular entity should be attributed to contracting authority, it is considered contracting authority. This avoids the risk of breaching the requirements of the LPP, but places a huge burden on the body, causing extra time, financial and human resources. The essential problem in determining what part of the entity’s activities should be devoted to the public interests in order the entity to appear in the list of contracting authorities is that in the present moment that part is not established, as a result any share shall be

decisive. In CJEU case law such evaluation is called ‘infection theory’ stating that even minor part of the activity oriented to meeting needs in general interest determines entity’s assignment of contracting authorities despite of the fact that absolute majority of the activity is of commercial character (Case C-44/96). Needs in the general interest, not having an industrial or commercial character, are generally needs which firstly are satisfied otherwise than by the availability of goods and services in the market place (offer) and secondly which, for reasons associated with the general interest, the State chooses to provide itself or over which it wishes to retain a decisive influence (Case C-18/01).

Again, in practice, of the utmost importance is the moment at which an entity must attribute itself to contracting authorities. It is logical that this is related to the time when the specific entity began to meet certain general interest, not having an industrial or commercial character. In the opinion of CJEU, entity, which has not been initially set up to meet the general interest, but later assumed the duties related to the meeting of general interest, satisfies the condition (general interest, not having an industrial or commercial character) describing an entity governed by public law. So it is possible that the entity was established for certain commercial activities, but over time it begins an activity meeting the general interest, and therefore arises the issue of its inclusion in the list of contracting authorities. The CJEU treats this aspect again extremely wide as considers the actual meeting of general interest sufficient, even in the absence of changes in the formal documents governing activity of the entity (Case C-470/99). Thus, in order to claim for the contracting authority status it is sufficient to actually initiate activities that meet the general interest (not having an industrial or commercial character) and to find out whether in a particular case at least one of the conditions set in Paragraphs 1, 2, 3 of Part 2 of Article 4 of the LPP is satisfied.

The LPP says, that one of the conditions when the entity meeting the public interests (not having an industrial or commercial character) must register as contracting authority is if its activity is financed, for more than 50 per cent, with state or municipal budget resources, or with other resources from state or municipal budgets, or with the resources of other public or private legal persons specified therein. The seemingly simple and clear criterion after analysis proved to be quite complex. There are plenty of entities, not permanently financed by the state or local government funds, which leads to the need for them at the beginning of each financial year to decide on their status as a contracting authority. The Directive does not set the percentage, but only defines the concept of a significant part; that determines the national law to apply more specific criterion. However, nevertheless, in this context, there is a broad area for uncertainty. Following

the CJEU case law, it is important to note that both direct and indirect funding may affect the assignment of the contracting authority status. The CJEU in this issue generally progressed so far that the funding criterion is interpreted the most broadly to include into the concept of state funding an indirect funding (eg. Case C-380/98), fees collected directly from the public to maintain the entity (eg. Case C-337/06), and probably the most relevant in real time reception of EU assistance funds (Jurgeleviciene, 2005). Especially in the event of the latter funding measure, there is a lot of trouble. The support comes through tendering procedure and at the beginning of the financial year; it may be yet not known what percentage of the activities to be funded in this way. The CJEU clarified this issue in some detail saying that in order to determine the starting point for the funding and contracting authority status one should follow a certain level of predictability of the procedure. With regard to legal certainty and predictability in the law, the determination of the contracting authority status shall be carried out annually in advance based on the data for the beginning of the budget year, on the planned financing, even if it is only preliminary. Having acquired the status of the contracting authority, procurement procedures shall apply to all purchases started in the budget year and even in the event of change in the status of contracting authority, the procurements launched under the procurement procedures should be completed in accordance with the public procurement legislation (case C-380/98). Thus, in accordance with the CJEU case law, funding criterion for different types of financing and compliance with the condition in each individual case shall be individually assessed. In more complex cases, the final answer shall be provided by the court in a civil case (if the vendor states that the entity did not comply with the LPP, though he believed that it had to), or in administrative proceedings (if the issue of assignment of the contracting authority status is raised by the Public Procurement Office).

There is another condition for the entity carrying out activity meeting the general interest (not having an industrial or commercial character) to be deemed contracting authority listed in Paragraph 2 of Part 2 of Article 4 of the LPP. It is the criterion of control – to be subject to control (management) by the state or local authorities, or other public or private legal persons specified in this Paragraph. As for this condition, a question arises: how to determine and measure the control? In this issue, the CJEU states, that the control is a factor outlining its independence and the ability to act independently in the market without being affected by decisions of state institutions. Even if the right of the state to control implementation of public procurement does not clearly arise from provisions of the law, the state may exercise this control indirectly. For this purpose, the entity qualifies as a state-controlled. (Case C-306/97; Case C-353/96). It is recognized that the

entity is under control when the rule of law determines or the public administration authorities decide on the price and quantity of the goods produced, on the nature, direction, and pace of the activity, on the right of the representative of the central administration to liquidate the entity, on the possibility of a public administration authority to carry out on-site inspections, audits and to the resultant proposals (Case C-237/99) etc. However, it is not possible to objectively determine the extent to which control is essential. Possible situations where control is fragmented and insignificant, but still raises the need to assign contracting authority status. The CJEU has established one more dependence criterion, which is useful to identify the extent of control. It has stated, that the contracting authority must be dependent on the public authorities in such a way that the latter are able to influence their decisions in relation to public contracts (Case C-237/99). Although pretty abstract this criterion is very useful while analysing specific situations. To summarize, it can be noted that in order to establish control it is important to name whether other bodies influence core activities of the authority under analysis in decision-making. However, such explanation is not comprehensive and complete, which in turn also implies the need for an individual assessment of each case.

The last condition set in part 2 of Article 4 of the LPP is the requirement for the authority to have has an administrative, managerial or supervisory board, more than half of whose members are appointed by the state or local authorities or by the public or private legal persons specified therein. This condition in terms of its content is significant due to the fact that through participation in the activities of the administration, management or supervision, an influence is made and a direct link between the body which appoints the members and the entity to which they are appointed is shown. Following the letter of the law, if at least one of the founders / shareholders of a particular entity is a contracting authority and it is involved in the appointment of the management bodies, then the entity due to its founder's status should be attributed to the contracting authorities (of course, if it meets other necessary criteria).

Summarising the information provided herein, attention should be paid to the great role of CJEU in interpreting laconic provisions of the procurement directive. At the present time, formed rules of explaining these provisions interpret the Directive expansively and assign the status of contracting authority to extremely wide range of subjects, which often can be even disproportional to the aim of the Directive.

Conclusion

The survey revealed that the matter of acquisition of contracting authority status is problematic and subject to discussion both in national law

of the Republic of Lithuania and in EU law. Plenty of relevant CJEU practice shows that all member countries face uncertainty concerning contracting authority status. Extremely broad interpretation of Article 9 of the Directive presupposes that in the EU space it is intended to assign the contracting authority status to the widest possible range of entities that can often be regarded as disproportional encumbrance of operating conditions thereof.

Contracting authority is a subject to mandatory provisions of public procurement legislation. In the Republic of Lithuania, norms regulating legal relation of public procurement are determined implementing the key EU directives on public procurement, which explains their dynamism within the period of years 1999 – 2006. Notably, in national law, provisions of the procurement directive concerning conditions for acquisition of the status of contracting authority have been establishing stricter regulation than the minimum required; however, when evaluating CJEU case law this is deemed progressive method allowing better orienting in legal regulation for subjects of public procurement. National law-level survey noted that legislation of the Republic of Lithuania uses a lot of concepts to define state and municipal authorities as well as other bodies implementing public administration functions; however, these concepts are not explained. This can lead to inappropriate understanding of authorities named in Part 1 of Article 4 of the LPP in order to attribute them to contracting authorities. The analysis of practical problems of applying the conditions of attribution of public and private legal entities to contracting authorities laid down in Part 2 of Article 4 of the LPP, it is noted that the CJEU has formed a rigorous and including extensive circle of entities interpretation of these conditions. In this aspect, functional and infection theory shall be considered the most important. Based on these theories, in attribution of particular entity to contracting authorities, the main attention shall be paid to the actual performance of its functions (not having an industrial or commercial character), related to meeting the general interest and to the fact of such activity itself, and not to the part of the organization's activities. Evaluating application of the alternative conditions set in Part 2 of Article 4 of the LPP, it should be noted that the issue of more than 50 percent funding from the state or local government must also be interpreted broadly to include all possible cases of indirect financing, including but not limited to, the EU support.

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