**"The constitutional barriers to the applicability of private law in the public sector"**

**The objective of the study / research hypothesis**

The aim of this project is to answer several fundamental questions. First, whether there are constitutional barriers to the use of private law in the public sector. Then, in the case of an affirmative answer to the first question, it should be clarified what these barriers are, whether in axiological and functional terms they form a homogenous group of principles and values, and whether they are aimed solely at protecting the interests of individuals in relations with the authorities, or also, in some cases, the purpose of these barriers is to protect the public interest (the interest of the State and other public entities). It is important to bear in mind the existence of a kind of dialectic and interdependence within the analyzed material. The Polish Constitutional Tribunal noticed the need to modify the institution of private law to the needs of the public sector, but simultaneously it stressed that using instruments of private law to form the property sphere of public bodies, the legislature must preserve the basic standards governing civil law transactions in a democratic state of law. The Polish Constitutional Tribunal expressed the view the civil law standards belong to the principles of a democratic state of law. The members of the project put forward the **hypothesis** that taking into account the values and principles of constitutional law in the discourse leads to the conclusion that the traditional institutions of civil law applied in this particular environment, i.e., the public sector, at least partially change its nature. In particular, the use of civil institutions in public administration, especially using contracts, does not guarantee, as is sometimes claimed in rather superficial opinions, a treatment on equal terms of citizens by the administration. Failure to take account of this phenomenon by the legislator and the authorities applying the law can lead to all sorts of abuses and aberrations which cannot be reconciled with the constitutional axiology. This in turn leads to a **hypothesis** that it is reasonable to form a separate branch of civil law relating to the functioning of public sector entities. Not only is it necessary because of the shortcomings of classical civil law methodology, but also because of the need to respect constitutional rights and freedoms of citizens. The project will address fundamental issues arising from the use of private law in the public sector, such as the division of public law and private law in the light of the constitutional axiology; constitutional boundaries of the legislator's freedom to choose the method of regulation of social relations; the nature and extent of the contractual rights serving public sector entities; the issue of freedom of contract with regard to the public sector entities and the constitutional principle of legally binding public entities; legal capacity of public entities; the specificity of the regime the civil liability of the public sector and the principles and constitutional values; the issue of reconciling the so called autonomy of tax law and the autonomy of social legislation with the constitutional principles and values.

The most important results of the project will be published in an extensive monograph devoted to the constitutional barriers to the use of civil law in the public sector. The monograph will present the conclusions de lege ferenda relating to, among others, the proposed new Civil Code and the draft of the General regulations of the administrative law. Team members plan to present the results of the study on the international forum. In particular, the planned monograph will be published in English. There is a good chance that the results of the project will represent a significant contribution to European science of law because of the widely used comparative method and due to the fact that the issue has not yet been comprehensively analyzed.

**The research method applied**

During the execution of the project the following methods will be used: formal-dogmatic, comparative, interdisciplinary, both in narrower (internal integration of legal sciences) and a broader sense, i.e. taking into account the methodological assumptions of Economic Analysis of Law and contemporary concepts in political science.