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The Legal Aspects of Outsourcing Social Services

Abstract:

Objective: This article aims to examine how legal regulations shape the structure and functioning of the social services market in Poland. Social services meet the basic needs of individuals and their families, and the state bears the responsibility to provide them. Contracting significantly changed how providers deliver social services to citizens. Nowadays, in many countries, for-profit entities, public sector bodies, and non-profit organisations typically provide social services.

Research Design & Methods: I based the study on an analysis of the literature and normative acts. The primary research method for examining the legal acts was the formal-dogmatic method.

Findings: The analysis of selected legal acts revealed a growing trend towards outsourcing further areas of social services. The outsourcing process happens through competitive procedures in which external entities bid for a contract to provide services for a specified period. Although public law governs the conclusion of contracts, that fact does not affect the assessment of their nature from the perspective of civil law. The public administration's use of contracts gives rise to problems stemming from the very nature of the contract.

Implications/Recommendations: The state's withdrawal from the direct provision of social services is a multi-faceted issue. Consequently, one should assess the phenomenon of outsourcing social services not only from the perspective of economic benefits but also in terms of the state's responsibility for the quality and accessibility of services, the state of public finances, and the protection of the interests of service users and the employees providing these services.

Contribution/Value Added: This article contributes to an understanding of the concept and complexity of out-sourcing by public administration in the social services sector. The research identified the funda-mental issues associated with the marketisation of social services. Consequently, the article serves as a source of knowledge for theorists and policymakers, while also making a valuable contribution to the literature on public management.

Article classification: theoretical article

Keywords: social services; outsourcing; privatisation; contract; modern welfare state; contracting out

JEL classification: K230, I380

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1. Introduction

From the late nineteenth century to the late 1970s, the state played a fundamental role in ensuring the social security of its citizens. The late 1970s brought a crisis of the welfare state, fuelled by the oil crisis and by the OECD's critical analyses of the welfare state's excessive costs and the resulting risks (Golinowska, 2005). New challenges intensified criticism of the welfare state: the social emancipation of women, globalisation, trade liberalisation, and the development of service markets at the expense of employment in agriculture and industry, along with such associated problems as the crisis of the family, migration, rising unemployment, poverty, and social exclusion (Grewiński, 2021).

The crisis of the welfare state became part of a broader discussion on the need to reform the public sector, which rested on a bureaucratic model (Hoggett, 1991). In response to the crisis of public institutions in the early 1980s, the concept of 'New Public Management' emerged. The philosophy of New Public Management entailed professional, managerial governance in the public sector, clearly defined standards and performance metrics, greater emphasis on performance monitoring, decentralised public sector bodies, competition in the public sector, management techniques drawn from the private sector, and an emphasis on greater discipline and economy in the use of resources (Hood, 1991).

With the rise of New Public Management in many countries around the world, contracting came to dominate public services. In the social services sector (education, health, social care, social security, housing and employment services), the spread of contracting shifted these services from direct provision by the state to delivery by external providers through outsourcing (Lento & Porzycki, 2024). Currently, profit-oriented entities and non-profit organisations provide most social services, although central government or local authorities still provide some directly (Wollmann, 2018). In parallel with publicly funded services, the market for services offered by the private sector and paid for from private funds grows rapidly. This pattern is particularly relevant to the Polish context. As Golinowska (2018, p. 127) indicates, Poland did not see the same demand for the development of public social services as other countries did. Consequently, access to public services can be a source of inequality.

2. Literature Review

The literature uses the term 'outsourcing' very broadly to cover many types of services (Vitasek et al., 2011). Put simply, outsourcing involves contracting work out to an external party, namely someone outside the organisation (Power et al., 2008, p. 20). Outsourcing co-

vers many types of relationships between buyers and suppliers, such as co-sourcing, subcontracting, partnership contracting, joint ventures, third-party agreements, equipment management, public utility services, management buyouts, and strategic insourcing. In this sense, outsourcing is simply one of the ways of carrying out tasks (Gay & Essinger, 2002, pp. 13–14). Lysons and Farrington (2016, p. 361) offered a broader definition: outsourcing is a management strategy that transfers major non-core functions to specialist, efficient, external providers.

In the private sector, outsourcing involves transferring specific, repetitive tasks of a given organisation to an external entity on a contractual basis. Alongside the tasks, the organisation often also transfers the means of production (such as staff, equipment, technology, and other resources enabling the performance of tasks) and the decision-making powers regarding the transferred tasks (Greaver, 1999). Importantly, a company may outsource all business functions conducted within its structure, provided that the conditions exist for their more effective and efficient performance. Consequently, outsourcing covers not only support functions but also managerial and core functions (Trocki, 2001).

The (American) Outsourcing Institute lists the most important reasons for companies to adopt outsourcing: cost reduction and control, the ability to focus on core business, access to top-quality production capacity, freeing up internal resources for other purposes, acquiring new resources previously unavailable to the company, faster benefits from restructuring, offloading difficult-to-perform functions and their management, raising capital, risk sharing, and generating cash (Gay & Essinger, 2002, pp. 16–17).

One can categorise outsourcing activities according to various factors: location understood as the place where the supplier carries out the contracted work (in-house – at the client's premises; off-site – at the supplier's premises); depth meaning the scope of work commissioned to an external partner (individual, functional, or competence-based outsourcing); and the work itself, specifically the type of work commissioned (process-oriented and project-oriented outsourcing). For the discussion that follows, the last distinction matters most. Process-oriented outsourcing involves tasks with a standardised and systematic structure, whereas project-oriented outsourcing involves commissioning unique, non-routine undertakings. For this reason, managing project-oriented outsourcing presents greater difficulties, as the supplier does not fully understand the complexity and implications of the outsourced work. Furthermore, those managing the work lack the necessary information or sufficient experience, which carries significant risk (Power et al., 2008, pp. 32–33).

In public management, outsourcing means that the government, which outsources the provision of public services, becomes the purchaser, while the external organisation providing the public service becomes the supplier (Argento, 2022). Factors contributing to the spread of outsourcing in the public sector include cost-effectiveness, a lack of specialist knowledge or of the ability to recruit staff, the introduction of New Public Management in public administration, a neoliberal agenda underpinned by political objectives such as vote-winning, opposition to trade unions, corruption, and a long-term ideological programme aimed at transforming the structure of government towards a contractual state (Sharma, 2025).

To better understand the phenomenon, one must distinguish between the terms 'privatisation' and 'outsourcing'. Privatisation involves the sale or other transfer of ownership of a public enterprise or entity to a private entity, whereas outsourcing merely involves the private sector providing public goods or services (Poutvaara & Jordahl, 2020). Furthermore, the provision of goods and services through outsourcing is temporary, as the contract specifies the duration of the task. In contrast, privatisation usually means a one-off sale of state assets, and the government does not retain control over management or operational risk (Jensen & Stonecash, 2004). Fábián (2010, p. 39) takes a much broader view of privatisation, distinguishing five types:

- formal privatisation – the state performs public tasks, but using forms appropriate to private law,
- privatisation of the financing of public tasks – raising funds for the performance of tasks from the private sector,
- material privatisation – the privatisation of public tasks, i.e. the state divesting itself of tasks for which the public sector was previously responsible,
- functional privatisation – allowing private entities to perform public tasks,
- the sale of state property or property belonging to other public entities.

3. Research Methodology

In this article, I aim to identify the legal basis for using outsourcing to provide social services and to highlight key issues in the use of outsourcing in Polish social policy. The primary research method is the formal-dogmatic approach, which determines the content of applicable legal norms. I analysed sources of Polish law and selected domestic and foreign literature on the welfare state, privatisation, the contracting of public services, outsourcing, and public procurement.

4. Results and Discussion

The legal basis for the outsourcing of social services includes:

- The Act of 8 March 1990 on Commune Self-Government,
- The Act of 7 September 1991 on the Education System,
- The Act of 27 August 1997 on the Vocational and Social Rehabilitation and Employment of People with Disabilities,
- The Act of 24 April 2003 on Public Benefit Activity and Volunteer Work,
- The Act of 12 March 2004 on Social Assistance,
- The Act of 29 July 2005 on Counteracting Drug Addiction,
- The Act of 29 July 2005 on Counteracting Domestic Violence,
- The Act of 27 August 2009 on Public Finance,
- The Act of 4 February 2011 on Care for Children Aged up to 3 Years,
- The Act of 9 June 2011 on Family Support and the Foster Care System,
- The Act of 11 September 2015 on Public Health,
- The Act of 23 October 2018 on the Solidarity Fund,
- The Act of 11 September 2019 – Public Procurement Law.

An analysis of the legal acts listed above shows a trend towards outsourcing further areas of social services. Furthermore, Polish legislation provides for two basic models for contracting public services:

1. awarding a public contract under the Public Procurement Law,
2. entrusting the performance of a public task under the Act on Public Benefit Activity and Volunteer Work.

Other Acts:

- contain provisions referring to the provisions of the Act on Public Benefit Activity and Volunteer Work (e.g. Article 25(5) of the Social Assistance Act),
- allow a public administration body to choose between applying the provisions of the Act on Public Benefit Activity and Volunteer Work and awarding a contract under public procurement rules (e.g. Article 63c of the Act on Care for Children Aged up to 3 Years),
- set out specific, autonomous procedures for entrusting the performance of tasks, but also those based on an open call for tenders (e.g. Article 14 of the Public Health Act).

The contracting procedure under the Act on Public Benefit Activity and Volunteer Work rests on a competitive mechanism similar to public procurement. Nothing here prevents non-

profit organisations from undertaking activities in the field of social services under the provisions of the Public Procurement Law. However, the Act on Public Benefit Activity and Volunteer Work reserves its contracting procedure exclusively for non-governmental organisations and other entities that carry out public benefit activities within the meaning of that Act.

Some legal acts – such as the Act on the Solidarity Fund – set out two separate competitive procedures: a call for applications for local government bodies and an open tender procedure for external entities. Taking into account the subject-specific aspect, the procedure for contracting social services has three variants:

- contracting out the provision of services to a private, for-profit entity,
- entrusting the provision of services to a private, but non-profit, entity,
- contracting the provision of services to a public entity (e.g. a local authority) other than the contracting authority, also selected through a competitive procedure.

From this perspective, outsourcing is a typical example of functional privatisation, as outsourcing involves private entities in providing services to citizens. The fact that public entities may participate in the competition for a contract to provide public services does not preclude that conclusion. I agree with Sześciło (2014, p. 59) that the definition of outsourcing does not deprive public entities of the opportunity to participate in a competitive procedure.

Subject Matter of the Contract

Both the Act on Public Benefit Activity and Volunteer Work and the Public Procurement Law define the subject matter of contracting broadly. Under the procedure set out in the Act on Public Benefit Activity and Volunteer Work, public bodies may award contracts for tasks in the areas listed below:

- social assistance, including assistance to families and individuals in difficult life situations and the promotion of equal opportunities for such families and individuals,
- support for families and the foster care system,
- activities aimed at the professional and social integration and reintegration of people at risk of social exclusion,
- charitable activities,
- activities promoting the integration of foreign nationals,
- health protection and promotion,
- activities for people with disabilities,
- promoting employment and vocational activation for the unemployed and those at risk of redundancy,

- activities in support of people of retirement age,
- science, higher education, education and upbringing,
- supporting and promoting physical culture,
- public order and safety,
- providing free civic advice,
- rescue and civil protection,
- assistance to victims of disasters, natural disasters, armed conflicts and wars at home and abroad,
- activities for children and young people, including leisure activities for children and young people,
- activities in support of the family, motherhood, parenthood, and the promotion and protection of children's rights,
- prevention of addiction and social pathologies.

Under the Public Procurement Law, social services fall within a broader category called 'contracts for social and other specific services.' Under Article 7(34), these contracts mean traditional or sectoral contracts for the services listed in Annex XIV to Directive 2014/24/EU and Annex XVII to Directive 2014/25/EU. Consequently, the subject matter of contracts for social services and other specific services covers:

- health, social and related services,
- administrative services in the fields of education, healthcare and culture,
- compulsory social security services,
- social benefits,
- other municipal, social and personal services, including services provided by trade unions, political organisations, youth associations and other membership organisations,
- religious services,
- hotel and restaurant services,
- legal services,
- other administrative and government services,
- the provision of services to the community,
- prison, public security and emergency services, unless excluded under other provisions of a classic or sectoral directive,
- detective and security services,

- international services,
- postal services,
- miscellaneous services.

Importantly, the names and codes set out in the Common Procurement Vocabulary – which aims to standardise the terms used by public institutions – apply to the description of contracts for social services. Furthermore, contracting authorities typically describe the subject matter of a contract in functional terms, specifying requirements relating to performance or functionality (Falkowska et al., 2017). Taking this into account, public procurement for social services resembles process-oriented outsourcing.

The Contract

In the private sector, an outsourcing contract counts as an unnamed contract and exhibits characteristics typical of contracts for services, contracts for work and labour, and contracts for specific work. As no specific legal institution defines outsourcing, drafters of such a contract draw on various provisions of contract law. A distinctive feature of an outsourcing contract is the adaptation of its elements to the nature of the relationship between the client and the service provider (Radło, 2011, p. 135). The essential elements of an outsourcing contract include: a description of the scope of work, an agreement on the level of service provided, remuneration, the term of the contract, conditions for managing the process, provisions relating to intellectual property, sector-specific provisions, conditions for terminating the contract, provisions relating to subcontractors, and the jurisdiction for resolving disputes. Among these, the most important provisions are the description of the scope of work (which constitutes the subject matter of the contract) and the agreement on the quality of services (including the establishment of performance metrics) (Malarewicz-Jakubów & Tanajewska, pp. 239–240).

The legal characterisation of outsourcing contracts for the provision of social services varies depending on the legal system in force in each country. In Scandinavia, private law governs these contracts, and there the principle of freedom of contract plays a fundamental role. However, in Germany and France such agreements are ‘administrative contracts,’ subject to a specific set of rules reflecting the primacy of the public interest (Hansen et al., 2018, p. 4).

A public procurement contract is not a distinct type of named contract and, as a rule, does not differ in nature from contracts concluded between parties in commercial transactions. Under the Public Procurement Law, a contract for social services is a contract for consideration, concluded between the contracting authority and the contractor, whose subject matter is social services. The civil law nature of the contract stems from Article 8 of the Public Procurement

Law, pursuant to which the provisions of the Civil Code apply to contracts in public procurement matters, unless the provisions of the Public Procurement Law provide otherwise (Winiarz, 2025). From a civil law perspective, one should classify a contract for social services as a contract of mandate or a contract for the provision of services (Falkowska et al., 2017). The subject matter of such a contract is most often periodic or continuous services. As with other public procurement contracts, the parties must conclude a contract for social services in writing on pain of nullity and for a fixed term. Generally, a public procurement contract for periodic or continuous services may run for a maximum of four years. Mandatory contractual provisions (regardless of the type, duration, and value of the public contract) include: the planned date of completion of the service, the terms of payment of remuneration, and the total maximum amount of contractual penalties that the parties may claim.

A contract for the performance of a public task is also a civil law contract, as the Act on Public Benefit Activity and Volunteer Work does not provide a basis for concluding administrative contracts (Zacharko, 2017). The mandatory elements of such a contract include a detailed description of the task (including the purpose for which the grant was awarded and the deadline for its completion), the amount of the grant awarded and the payment procedure, the deadline for using the grant, the procedure for monitoring task performance, the deadline and method of settling the grant awarded, and the deadline for returning the unused portion of the grant. The parties must conclude the agreement in writing on pain of nullity and for a fixed term not exceeding five years.

The model framework agreement appears in the Regulation of the Chairman of the Public Benefit Committee of 24 October 2018 on model offers and model framework agreements concerning the performance of public tasks, and on model reports on the performance of such tasks. Section 17 of the contract deserves particular attention. Firstly, Section 17 stipulates that generally applicable law governs the contract, including the Act of 27 August 2009 on Public Finance, the Act of 29 September 1994 on Accounting, the Act of 29 January 2004 – Public Procurement Law, and the Act of 17 December 2004 on Liability for Violation of Public Finance Discipline. This provision demonstrates that contracts concluded by public authorities with non-governmental organisations involve the interplay of administrative law, civil law, and financial law. Secondly, the template includes a provision stating that the Civil Code applies in matters not covered by the contract and that a common court resolves any dispute, which confirms the civil law nature of the contract.

An analysis of the Act on Public Benefit Activity and Volunteer Work and the Public Procurement Law shows that the parties enter into a civil law contract. In Fábián's typology

of privatisation, this arrangement manifests formal privatisation. The fact that strict public law regulations govern both the process of selecting the service provider and the content of the contract does not alter the legal nature of the relationship between the parties (Sześciło, 2014, p. 59).

Issues Related to the Outsourcing of Social Services

The main challenges in the outsourcing of social services stem from the separation of the service purchaser (a public administration body) from the service provider (a non-profit organisation or a business sector entity). I identify two fundamental problem areas in the outsourcing of social services: incomplete contracts and issues related to contract performance.

A review of the literature shows that the impact of outsourcing on costs and quality depends on the type of the outsourced service. Outsourcing brings significant benefits in terms of quality and outcomes for services such as waste collection, cleaning and maintenance, road maintenance, and passenger transport (Andersson et al., 2019). Services such as healthcare and education involve serious contractual problems (Poutvaara & Jordahl, 2020). The literature calls this problem contract incompleteness. In the case of social services, contract incompleteness manifests itself in the ambiguity of provisions relating to quality, which the parties cannot contract. Personalised services (such as care services) rest on characteristics such as a sense of dignity, trust, and continuity of care, which the parties find difficult to specify in a contract and to enforce (Boeger, 2024, p. 38).

At the same time, outsourcing means that the purchaser loses the ability to monitor the services in question directly. Information asymmetry may encourage service providers to focus on superficial outcomes such as cost reduction whilst lowering quality (Bach-Mortensen & Barlow, 2021). Outsourcing means that the public administration loses full control over the tasks the service provider performs, whilst remaining responsible for the services external entities provide, including their availability and quality. In contrast, responding to irregularities among hierarchically subordinate service providers is much easier (Mulgan, 1997).

Furthermore, the public body remains responsible for the proper expenditure of public funds, and the absence of full information regarding the actual conditions of task implementation may have grave consequences. Therefore, the public administration should properly prepare and train its own staff not only in monitoring contract implementation but also in reporting and settling accounts with contractors.

5. Conclusions

In recent years, a growing trend towards contracting out social services emerged in Poland. Without denying benefits such as the development of civil society or access to specialist knowledge, I note that although the purchaser and the provider become partners under outsourcing, both remain separate entities operating under different conditions, with their own strategies and differing priorities.

The listed models of social services contracting do not include regranting, which the amendment to the Act on Public Benefit Activity and Volunteer Work of 22 January 2010 introduced into the Polish legal system. The nature of this study, the laconic legal regulation, and the marginal use of this contracting model in practice justify this omission. Furthermore, I omitted the discussion of vouchers as a form of social services outsourcing. Currently, no legal regulations provide for such a form of support within the social assistance system for a broader group of recipients. However, the introduction of vouchers for selected social services (e.g. the senior voucher) is the subject of the government's legislative work (Okła-Drewnowicz, 2024).

The marketisation of public services, including social services, poses a challenge for modern public administration. Public administration always retains responsibility for determining how a service is delivered and for other aspects (including planning and defining the service, determining who is eligible to receive it, its funding, regulation, and supervision). Drafting contracts and monitoring their enforcement requires skills in managing contractual relationships. In this context, the question arises whether the state has sufficient tools to regulate the provision of services and protect their users. Answering this question requires further in-depth analysis. One of the most prominent issues to consider is developing a framework enabling public administration bodies to exercise effective control over the services provided and to protect the public interest.

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