

Freedom of economic activity as a specific value and a principle of public economic law

Wolność działalności gospodarczej jako szczególna wartość i zasada publicznego
prawa gospodarczego

Свобода предпринимательской деятельности как особая ценность и принцип
публичного хозяйственного права

Свобода господарської діяльності як особлива цінність і принцип публічного
господарського права

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Summary: The subject of research in this study concerns the value issues in public economic law. The aim of the research is to examine the axiology of law and the axiology of economic law from the perspective of freedom of economic activity, and then to formulate the final conclusions derived from the analysis with reference to the institution of freedom of economic activity. I considered an analytical-dogmatic method as helpful for my analysis. The obtained result shows that the freedom of economic activity exhibits the features of a legal institution equipped with an axiological content and as a norm and principle of law, in particular of public economic law.

Key words: freedom of economic activity, values, public economic law, axiology of law, axiology of public economic law

Streszczenie: Przedmiotem niniejszego opracowania są kwestie dotyczące wartości w prawie publicznym gospodarczym. Celem badań jest aksjologia prawa oraz aksjologia prawa gospodarczego w perspektywie wolności działalności gospodarczej, a następnie sformułowanie wniosków końcowych odniesionych do instytucji wolności działalności gospodarczej. Za pomocną uznałem metodę analityczno-dogmatyczną. Rezultat analizy przekonuje, że wolność działalności gospodarczej wykazuje cechy instytucji prawnej wyposażonej w ładunek aksjologiczny oraz jako normę i zasadę prawa, a w szczególności prawa gospodarczego publicznego.

Słowa kluczowe: wolność działalności gospodarczej, wartości, publiczne prawo gospodarcze, aksjologia prawa, aksjologia prawa publicznego gospodarczego

Резюме: Предметом данной статьи являются вопросы ценностей в публичном хозяйственном праве. Целью исследования является рассмотрение правовой аксиологии и аксиологии хозяйственного права в перспективе свободы предпринимательской деятельности, чтобы сформулировать окончательные выводы, связанные с институтом свободы предпринимательской деятельности. В статье автор целесообразным посчитал применить аналитико-догматический метод. Результат анализа убеждает в том, что свобода предпринимательской деятельности проявляет черты правового института, наделенного аксиологическим содержанием, а также является нормой и принципом права, в частности публичного хозяйственного права.

Ключевые слова: свобода предпринимательской деятельности, ценности, публичное хозяйственное право, правовая аксиология, аксиология публичного хозяйственного права

Рецензія: Предметом дослідження є питання цінності в публічному господарському праві. Метою дослідження є аксіологія права та аксіологія господарського права в ракурсі свободи господарської

діяльності, а потім формулювання остаточних висновків щодо інституту свободи господарської діяльності. В статті застосовано аналітико-догматичний метод. Результат аналізу доводить, що свобода господарської діяльності має ознаки правового інституту, наділеного аксіологічним навантаженням, і як норма і принцип права, зокрема публічного господарського права.

Ключові слова: свобода господарської діяльності, цінності, публічне господарське право, аксіологія права, аксіологія публічного господарського права

Introduction

My attempt in the present paper is to present the freedom of economic activity as, in my opinion, a particular value and a principle of public economic law. The existing studies presented below describe freedom of economic activity either as a value of public economic law or as a principle of this law. Therefore, the analysis in this regard is still valid and the research method applied to carry it out will be an analytical-dogmatic one.

The freedom in question derives from the provisions of the Constitution of the Republic of Poland,¹ and then from the currently applicable Entrepreneurs Act.²

There are many theories, definitions and interpretations of the term ‘value of law’ and the term ‘principle of law’ in legal science. These are also formulated in relation to the issue of freedom of economic activity. The aforementioned issues comprise the problem of the axiology of business law.

First of all, the issue of the axiology of law and the axiology of economic law in the perspective of freedom of economic activity will be discussed as research objectives and then the conclusions drawn from such an analysis will be referred to the institution of freedom of economic activity.

1. Problems regarding the axiology of law

By a dictionary definition, axiology is the study of values and the criteria of valuation.³ Thus, it is important to answer the question of whether law is a value in itself

¹ The Constitution of the Republic of Poland of 2 April 1997, Journal of Laws [Dziennik Ustaw] 1997 no. 78, item 483 as amended.

² The Act of 6 March 2018 – Entrepreneurs Act, consolidated text: Journal of Laws 2021 item 162 as amended.

³ <https://sjp.pwn.pl/slowniki/aksjologiczny.html> [access: 23.02.2022].

or whether it is dependent on other values from which it derives its source? Can law be free of values or not? First of all, however, it must be pointed out that traditional and contemporary legal science has never denied the important role of axiology in the consideration of law, both in the practical and theoretical spheres. Values are most often presented as alien elements in relation to the law, which, albeit entering into multiple relations with the law, never cease to constitute a clearly distinguishable object either influencing the law or taking the form of an object of influence of the law.⁴ However, assuming that the law can be a value in itself, reference should be made to the tradition of legal positivism and legal normativism. Legal positivism attributed particular importance to the rule of law in the formal sense, emphasising the separation of law and morality. Scientific reflection on the law envisaged its analysis as positive law, rather than what the law should be because of an assumed value system or because of the social consequences brought about by the validity of norms with a certain content in a given community. In legal positivism, the object of interest of legal sciences was exclusively the law applicable at a particular place and time, i.e. in a dogmatic sense.⁵ The legal norm raised interest mainly with regard to the way of formation, construction and the interrelationship of competence among norms.⁶ Therefore, the origin of the legal norm and its axiological basis were not investigated. This leads to the conclusion that law is a self-existent value.⁷

The above position has, however, been questioned by arguing that the 'letter of the law,' statutory law, is not a value in itself, and it is not the task of the legislator to formulate a legal rule in such a way that the role of the body applying the law is reduced to mechanical subsumption.⁸ The key flaw of legal positivism in its classical form was that it attributed value to the law itself. Consequently, it can be argued that law is not free from morality, for it leads to relativism in the sphere of values and fosters the view that everything remains relative. On the other hand, the liberation of law from values, its relativisation, especially of economic law, will always give rise to the temptation to instrumentalise it.

The concept of natural law that operated well before legal positivism is outside the visions of the positivist legal theory. The law of nature is a set of norms or

⁴ That is the way of argumentation of K. Działocha, *Hierarchia norm konstytucyjnych i jej rola w rozstrzygnięciu kolizji norm*, in: *Charakter i struktura norm konstytucji*, ed. J. Trzczyński, Warszawa 1997, p. 91.

⁵ S. Wronkowska, *Spory o sposób pojmowania prawa*, in: A. Redelbach, S. Wronkowska, Z. Ziemiński, *Zarys teorii państwa i prawa*, Warszawa 1994, pp. 97–99.

⁶ H. Kelsen, *Reine Rechtslehre. Einleitung in die rechtswissenschaftliche Problematik*, Leipzig 1934, p. 77.

⁷ H. Kelsen, *The Pure Theory of Law and Analytical Jurisprudence*, Harvard Law Review, vol. 55, in: M. Sobolewski, *Podstawy teorii państwa*, Kraków 1986, p. 68.

⁸ M. Zdyb, *Publiczne prawo gospodarcze*, Lublin 1995, p. 29. A similar opinion is presented by idem, *Publiczne prawo gospodarcze*, Kraków 1998, p. 103.

judgments that provide axiologically defined meaning to norms, and concern human conduct and behaviour also regulated by positive law. Absoluteness of norms does not depend on the choice of a certain type of behaviour by man. Natural law is an order distinct from positive law. Some people assume that natural law has an overriding character over positive law and determines the content of positive law. The norms of natural law apply independently of acts of state authority because they are grounded in absolute evaluations and are, as it were, necessary norms. Judgments and norms are characterised by immutability and stability, as they relate to essential issues such as the world order, human nature or a particular community. A basic claim for the concept of the law of nature, irrespective of whether one considers God, nature or human dignity or the nature of society as its source, is that the law exists objectively.⁹ It is of the utmost importance that these absolute values are the basis of the law in force.¹⁰ It must be emphasised that the juridical-natural area offers the possibility of searching for the values of law, including public economic law.

Besides the main concepts of the essence of law in the stratum of its definition, including through axiology, other also important intermediate concepts have emerged, i.e. primarily legal realism and legal hermeneutics, theories of argumentation or legal rhetoric, as well as psychological theories of law but they are not the most important ones in the scope under discussion.

When summarising the matter under consideration, hybrid concepts concerning the understanding of legal theory cannot be ignored and not elaborated upon. In this regard, special attention must be paid to Ronald Dworkin's concept, which is referred to as the neoliberal concept. According to this concept, law is saturated with values but does not take into account legal-natural assumptions in their entirety. Rules are norms of conduct and they are binding because they have been properly established. Furthermore, they establish goals that are outlined for given collectivities. A value-oriented understanding of law is expressed through the concept of law not only in the fact that in addition to rules, the law includes the principles which prescribe the implementation of defined goals through specific rulings in specific cases. The law in the scope in question is an institutionalised social practice imbued with values, integrated and coherent. The adjudicator of a particular case takes the system of norms of conduct, i.e. rules and principles, as coherent as

⁹ S. Wronkowska, *Spory...*, p. 106.

¹⁰ G.L. Seidler, H. Groszyk, J. Malarczyk, *Wstęp do teorii państwa i prawa*, Lublin 1991, p. 180.

possible and adjudicates in such a way that the axiological integrity of the system is preserved at the highest level.¹¹

Taking the abovementioned aspects into consideration, it should be stated that there is a constant need to look for a pattern or model of creating values, which appear as unshakeable foundations necessary for building a specific system of legal norms, including the norms of public economic law for developing the institution of freedom of economic activity. The concept of natural rights, as well as the partial application of neo-liberal concepts, may be conducive to it. In my opinion, it would be a mistake to present a concept according to which the freedom of economic activity derives specifically from a particular system of axiological concepts of law. After all, the justification for its validity derives from precisely mixed concepts. Thus, individual freedom in the sphere of economic activity is legal and natural, but the justification of its location in the provisions of constitutional rank indicates, in a way, the neo-liberal pragmatism of the legislator, who, in my opinion, established the goal for this freedom, which is a positive possibility for the economic system of the state to undertake and carry out economic activity by subjects of law in the least regulated manner possible.

2. Problems of the axiology of public economic law from the perspective of freedom of economic activity

Public economic law is a branch of the Polish legal system covering issues of economic activity and entities conducting economic activity. Constitutional economic freedom determines the directions of regulation of public economic law. Basically, it is the constitutional values that determine the socio-economic system of the state, in which the position of the subjects of economic activity is defined by the regulations determined by the constitutional freedom of entrepreneurship. All aspects pertaining to public economic law possess some kind of value content, which results in the implementation of the said values into the specific regulations of public economic law concerning the provisions on entrepreneurship, the relations among entrepreneurs and the entrepreneur-state relationship. An economic system without a constitutionally framed affirmation of economic freedom would be illusory, without specific market mechanisms and legal institutions. Therefore, economic freedom and all the freedoms related to it determine the way in which economic ac-

¹¹ S. Wronkowska, *Spory...*, pp. 124–125.

tivity is exercised. The meaning given to the freedom of economic activity in the Constitution is primarily determined by its links to entrepreneurship and the situation of entrepreneurial subjects in the social market economy, which constitutes the basis of Poland's economic system. By its reference to and inseparable connection with the social market economy, economic freedom thus becomes an element and function of the social market economy. Together with all other values of the social market economy, it also characterises the economic system of the state – it forms the basis of the economic system of the Republic of Poland.¹² It is beyond scholarly dispute in the doctrine of public economic law to accord special significance to economic freedom in a constitutional view of the situation of an individual: 'it belongs to values that are precious to the individual.'¹³ The Constitutional Tribunal distinguishes the features of economic freedom, characterising it as the right, realised in acts of will, to undertake and determine the object of economic activity, to conduct it in the form chosen and to terminate it.¹⁴ Economic freedom is a value of a specific nature. In fact, its source is the freedom of man,¹⁵ which is objective in nature and independent of the will of public authorities. The association of economic freedom with the freedom of man grants it the same expression of independence and objectivity that belongs to the freedom of the human person. It means that economic freedom has not been created by any legislator. The legislator, using legal terminology, merely confirms that economic freedom exists and is necessary for the proper functioning of market mechanisms.¹⁶ Therefore, since the freedom of economic activity derives from the freedom of man as a natural being, or derives from God, then, in view of the dignity of the human person, it cannot be put in any other way than as an undeniable value in itself, expressed in the provisions of constitutional rank and ordinary laws.

Public economic law remaining within the circle of disciplines of a dogmatic nature is also characterised by certain values, which constitute the basis of each law framed in a system. Nevertheless, it has certain axiological distinctions that shape and impact the overall axiological assessment of the legal system in the state. In this respect, the axiological dimension of business legislation and issues related to the interpretation of business law are of particular importance. Undoubtedly,

¹² Judgment of the Constitutional Tribunal of 30 January 2001, K 17/00, OTK 2001, no. 1, item 4.

¹³ K. Wojtyczek, *Horyzontalny wymiar praw człowieka zagwarantowanych w Konstytucji RP*, Kwartalnik Prawa Prywatnego 1999, no. 2, p. 27.

¹⁴ Judgment of the Constitutional Tribunal of 29 April 2003, SK 24/02, OTK 2003, no. 4A, item 33.

¹⁵ K. Wojtyczek, *Granice ingerencji ustawodawczej w sferę praw człowieka w Konstytucji RP*, Kraków 1999, p. 37.

¹⁶ Judgment of the Constitutional Tribunal of 14 June 2004, SK 21/03, OTK 2004, no. 6A, item 45.

the institution of freedom of economic activity remains a key value for public economic law.¹⁷ The Entrepreneurs Act should be mentioned in particular with regard to ordinary laws in the field of the regulation of freedom of economic activity. The preamble to this law, which emphasises the importance of freedom of economic activity, is indeed noteworthy. The preamble indicates that freedom of economic activity was the determinant for the enactment of the said law, furthermore, that the freedom in question should be protected and promoted given its contribution to the development of the economy and the growth of social welfare. It must be clearly emphasised that the freedom of economic activity already standardised in the preamble to the Entrepreneurs Act 'stems' from the Constitution. It is an expression of the constitutional value that the freedom of economic activity is. Thus, it does not remain in isolation from the values expressed by the Constitution. It must therefore express and elaborate the constitutional freedom in the ordinary law. Furthermore, specific values bring tangible benefits. Indeed, public economic law doctrine argues that the embedding of legal norms in values influences the content and modus operandi of public authorities.¹⁸ Thanks to accepted values, entities applying the law act on the basis of fixed axiological assumptions.¹⁹ Legal institutions, organisational structures, forms of action of public administration are not axiologically indifferent, and a value-based element should be taken into account when shaping them.²⁰ Thus, it can be concluded that the value of freedom of economic activity is of fundamental importance not only for the economic system of the state but also for the entire legal system. Carrying a certain axiological load, it influences the axiology of the entire system of law, constituting an essential part of it.

Therefore, following the issues raised on the question of values, since freedom of economic activity is of fundamental importance for the legal system, and in particular for public economic law, the question of rules of law naturally arises. However, it is first necessary to distinguish them from the rules of law using methods derived from neoliberal concepts of law. Principles differ from legal rules not only in the basis of their validity but also in their internal structure. Rules take the form of orders (prohibitions) of a definitive nature, setting out an obligation of behaviour

¹⁷ A similar opinion is presented by A. Powałowski, *Wprowadzenie do aksjologii prawa gospodarczego publicznego*, in: *Państwo a przedsiębiorca. Aktualne wyzwania*, eds. A. Borkowski, W. Małecki, Wrocław 2019, p. 228.

¹⁸ M. Zieliński, M. Ziemiński, *Uzasadnienie twierdzeń, ocen i norm w prawoznawstwie*, Warszawa 1988, p. 57.

¹⁹ J. Zimmermann, *Aksjomaty prawa administracyjnego*, Warszawa 2013, p. 43.

²⁰ K. Strzyczkowski, *Uwagi o zadaniach nauki o prawnych formach działania administracji gospodarczej*, in: *Instrumenty i formy prawne działania administracji gospodarczej*, eds. B. Popowska, K. Kokocińska, Poznań 2009, p. 35.

in such a way that only its complete fulfilment allows the action (omission) of the addressee to be qualified as lawful. In this view, the category of partial fulfilment of a rule creates an expression that is contradictory, as the act of fulfilling the rule is either complete or there is no rule at all. Principles of law, on the other hand, while protecting certain rights of an individual, impose obligations to achieve certain states of affairs only to the extent that they do not upset the relevant equilibrium of the system or a part of it, in particular, by encroaching on the rights of others or by unjustifiably drawing on the public good.²¹ Principles can also be seen as optimisation precepts of an idealistic nature. Of course, they are a type of legal norms but they have a separate status in relation to the so-called norm-rules. The differentiating element in this respect is the category of obligation. Principles formulate precepts to achieve certain states of affairs, while their implementation is guided by a kind of meta-directive – an obligation to generate the indicated effect to such an extent as the factual and legal possibility allows.²²

One should agree with the view that if a value of a certain type is recognised by the legislator as a necessary element of the legal order, he will incorporate a directive statement into the legal system in such a formulation that the entity applying the law will read it as a rule of conduct. In the system of law, principles are the normative form of values and are used to introduce certain values into the system of law and not types of behaviour or certain states of affairs that are the subject of an obligation. Admittedly, the degree of generality of the obligation determined by the principles belongs to the catalogue of prognostic features differentiating the ordinary norms from the fundamental norms but this generality does not result from an explicit intention of the legislator to cover a relatively wide range of future situations by means of a precept or prohibition. The use of such names is determined by the order of the language of axiology, i.e. the field into which the legislator enters when reaching for statements about the status of principles.²³

Moreover, in the above perspective, freedom of economic activity as a value turns out to be a principle of law derived from the Constitution and the Entrepreneurs Act introduced into these legal acts by means of directive statements expressed in the content of legal norms, and recorded through grammatical expressions in the form of legal provisions. In constitutional terms, it is the principle of freedom of economic activity. Article 20 of the Constitution in force defines the economic

²¹ M. Kordela, *Zasady prawa jako normatywna postać wartości*, *Ruch Ekonomiczny, Prawniczy i Socjologiczny* 2006, vol. 68, no. 1, pp. 39–40.

²² L. Morawski, *Zasady prawne – komentarz krytyczny*, in: *Studia z filozofii prawa*, ed. J. Stelmach, Kraków 2001, p. 71.

²³ T. Gizbert-Studnicki, A. Grabowski, *Normy programowe w konstytucji*, in: *Charakter i struktura...*, p. 100.

system of the Republic of Poland as a synthesis of the so-called welfare state and the free market.²⁴ Such a symbiosis is based on one of the pillars defined as freedom of economic activity. Therefore, as it was mentioned above, the freedom of economic activity is one of the principles of the economic system of the Republic of Poland. Thus, it is a systemic principle regulated by the Constitution of the Republic of Poland.²⁵ At the same time, it is worth noting that the freedom of economic activity is a legal norm, in the content of which the word 'principle' does not appear. However, due to its content and its designated function, it may be treated as a principle, a norm of a special kind in relation to other norms of the Constitution.²⁶ Its location in Chapter I of the Constitution of the Republic of Poland, entitled 'The Republic', makes it necessary to perceive it as a systemic principle, i.e. as a constitutional principle of law.²⁷ It should also be noted that the freedom of economic activity, on the one hand, constitutes a constitutional systemic principle, and on the other hand, has the character of a public subjective right.²⁸

Taking into account the regulations of the Entrepreneurs Act, the content of the subjective right is the right to freely undertake, perform and terminate business activity. Thus, this right encompasses the sphere of free economic activity, free from state interference,²⁹ apart from the exceptions indicated in Article 22 of the

²⁴ L. Bielecki, J. Stelmasiak, *Zasada wolności gospodarczej. Zagadnienia podstawowe*, in: *Granice wolności gospodarczej w systemie społecznej gospodarki rynkowej. Księga jubileuszowa z okazji 40-lecia pracy naukowej prof. dr. hab. Jana Grabowskiego*, Katowice 2004, pp. 278–286 and L. Bielecki, *Zasada wolności gospodarczej w okresie transformacji ustrojowej w Polsce*, *Studia Iuridica Lubliniensia* 2003, vol. 1, pp. 61 ff.

²⁵ L. Bielecki, P. Ruczkowski, *Koncesja w prawie lotniczym. Zagadnienia administracyjnoprawne*, Kielce 2010, p. 25. A similar view is held by A. Bierć, *Sytuacja prawna przedsiębiorcy. Zagadnienia wybrane*, *Studia Prawnicze* 1998, no. 3, p. 7, as well as by C. Kosikowski, *Prawo gospodarcze publiczne*, Warszawa 1995, p. 245.

²⁶ J. Kuciński, W.J. Wołpiuk, in: *Zasady ustroju III Rzeczypospolitej Polskiej*, ed. D. Dudek, Warszawa 2009, p. 139.

²⁷ M. Floriańczyk, *Wolność gospodarcza a konkurencja*, in: *Konstytucyjna zasada wolności gospodarczej*, eds. W. Sz wajdler, H. Nowicki, Toruń 2009, p. 70. Similarly K. Zaradkiewicz, *Komentarz do art. 20 Konstytucji*, in: *Konstytucja RP*, vol. 1. *Komentarz do art. 1–86*, eds. M. Safjan, L. Bosek, Warszawa 2015, p. 522, cited after: I. Grądzka, *Wolność gospodarcza jako zasada ustrojowa i prawo podmiotowe*, in: *Działalność gospodarcza w dobie przemian. Aspekty prawne, ekonomiczne i etyczne*, eds. A. Szyszka, R. Frey, Kielce 2018, pp. 160–162. Similar views are represented by C. Kosikowski, *Wolność gospodarcza w prawie polskim*, Warszawa 1995, pp. 43–44 and P. Wrześniewski, *Ustawa o swobodzie działalności gospodarczej. Komentarz*, Warszawa 2010, p. 37.

²⁸ A. Żurawik, *Zasada wolności działalności gospodarczej i jej ograniczenia*, in: *System Prawa Administracyjnego*, vol. 8A. *Publiczne prawo gospodarcze*, eds. R. Hauser, Z. Niewiadomski, A. Wróbel, Warszawa 2013, p. 449.

²⁹ C. Banasiński, *Konstytucyjne podstawy ustroju gospodarczego*, in: *Prawo gospodarcze. Zagadnienia administracyjnoprawne*, eds. H. Gronkiewicz-Waltz, M. Wierzbowski, Warszawa 2017, p. 75.

Constitution of the Republic of Poland, which limit the said principle according to the criteria indicated in Article 31 (3) of the Constitution. The subject of the principle of economic freedom is in any case a person,³⁰ and sometimes an organisational unit created by him or her, if he or she carries out economic activity falling within the concept of economic freedom.³¹ It should be emphasised that economic freedom is not absolute, as it is subject, as communicated above, to limitations, also in terms of its subjectivity. The limitations in this respect consist, firstly, in allowing only entities with a legally required organisational and legal form to undertake and carry out certain economic activities, or, secondly, in excluding the possibility for certain categories of entities to carry out economic activities.³²

Taking the above mentioned facts into consideration, it should be stated that undoubtedly, public economic law is a set of norms concerning the entrepreneurship in a general sense, which is guided by values taking their origin in the Constitution of the Republic of Poland. One of the most important values in this respect, if not the most important one, is the freedom of economic activity, on the one hand as a constitutional principle and on the other hand as a principle of an ordinary law, the Entrepreneurs Act.

Conclusions

The result of the conducted analysis of the functioning of the freedom of economic activity in the sphere of values and principles allows us to formulate certain conclusions.

Undoubtedly, situating economic freedom in the provisions of the constitutional rank and then in the provisions of the ordinary law known as the Business Constitution, in the light of the research carried out, leads one to claim that the nature of freedom of economic activity is that of a value-norm-principle one.

The freedom of economic activity bears the name of a legal institution that has such a momentous axiological significance that, in my opinion, intrinsically fulfils the definition of values as something that is regarded as important and valuable for a human being and a society and is worthy of being desired and associated with

³⁰ J. Ablewicz, *Istota wolności gospodarczej w ujęciu filozoficznoprawnym*, Warszawa 2014, p. 102.

³¹ R. Biskup, *Wolność gospodarcza w wymiarze podmiotowym*, Lublin 2011, pp. 231–233.

³² E. Komierzyńska-Orlińska, *Ustawa Prawo przedsiębiorców, Rozdział 1, Przepisy ogólne*, in: *Konstytucja biznesu. Komentarz*, ed. M. Wierzbowski, Warszawa 2019, p. 43. This was also confirmed by the Constitutional Tribunal in its Ruling of 7 May 2011, K 19/00, LEX no. 48035.

certain positive experiences. Values represent some of the most essential elements in the functioning of human beings in their lives and in the life of the society. Material and spiritual values can be mentioned as the most important ones in this respect. They give meaning to human life and guide human behaviour. Economic freedom is contained in the value of human self-development, including entrepreneurship. It is an absolutely fundamental principle for the economic system of the state, from a legal and economic point of view. At this level, it is therefore impossible to deny the value of entrepreneurial freedom, which allows the social market economy to function. Without the aforementioned value, the social market economy would be a dead letter. Furthermore, the freedom of economic activity is a legal value in axiological terms, and thus enshrined in law through a legal norm from which a legal provision is derived. Only the most important issues in social life have such a high axiological-legal status. The position of economic freedom is also strengthened by the fact that it is situated in the Constitution of the Republic of Poland, which also proves that it is a derivative of human freedom and undoubtedly also belongs to the so-called constitutional freedoms. In general, 'economic freedom' has been recognised as a legally protected good and, which is particularly important, as a human right.³³

The freedom of economic activity is also a rule of conduct, reconstructed from the provisions of law, indicating to whom and under what circumstances a specific behaviour is permitted. In the scope in question, norms-rules and norms-principles can be distinguished. The first of them are norms-rules, determining prohibitions or orders that govern a specific type of behaviour, and norms-rules containing a model of behaviour, with which each action can be compared and determined as to whether it corresponds or contradicts the presented model. The second type of norms that make up the system of statute law are norms-principles that prescribe the realisation of the state of affairs, often generally defined.³⁴ The freedom of economic activity as a general norm of conduct defines its addressee, indicating the common characteristics of a certain social group, for example, those engaged in economic activity. In addition, it is abstract in nature, as it establishes a specific content, for example, with regard to undertaking, exercising and terminating a business activity.

What is more, the freedom of economic activity has a character of a legal principle, primarily in a directive sense, as it is explicitly stated in the legal text. The manner

³³ J. Reszczyński, *O pojęciu wolności gospodarczej w ekonomii i naukach prawnych*, Studia Ekonomiczne. Gospodarka – Społeczeństwo – Środowisko 2018, no. 1, p. 8.

³⁴ M. Sługocka, *Wolność działalności gospodarczej jako norma – zasada*, in: *Acta Erasmiana*, vol. 3. *Prace prawnicze*, eds. M. Sadowski, P. Szymaniec, Wrocław 2012, p. 135.

and place in which the indicated freedom is included in the Constitution and in ordinary law determines the essence of its meaning. It has been constituted as one of the basic pillars of the economic system of the state and is a constitutional principle. The content of Article 233 (3) of the Constitution of the Republic of Poland allows the derivation of the thesis that the freedom of economic activity should not only be perceived as a constitutional principle, but also as a fundamental freedom of a person and a citizen. It is not accidental that the doctrine of law sees the features of a subjective right in this freedom.³⁵ The view expressed by A. Bierć, according to whom the freedom of economic activity is doubly conditioned, deserves to be approved. On the one hand, it undoubtedly has the character of a principle of the economic system (within the framework of the social market economy idea) and, on the other hand, it has the features of a public subjective right, constituting an element of freedom of choice and the freedom of exercising a profession.³⁶ Consequently, economic freedom is also determined by the provisions of Articles 65 (1) and 31 (3) and Articles 77–81 of the Constitution of the Republic of Poland, i.e. the guarantors of freedoms, human and civil rights. By contrast, the content of the subjective right is to entitle every citizen to take up and conduct business activity. Thus, on the one hand, the state authority protects a certain sphere of the possibilities of an individual against its interference and restrictions, while on the other hand, it narrows the scope of the state's decisions. In this way, the role of the state is reduced to verifying only whether the entrepreneur has complied with the conditions laid down by law in this respect.³⁷

In conclusion, it should be stated that the freedom of economic activity has an extremely important significance in the sphere of legal values of constitutional nature and of ordinary laws, expressed in a normative manner in these legal acts, at the same time constituting a legal principle. Thus, it constitutes a complete expression of the functioning and validity of a legal institution equipped with an axiological, normative element and as a rule of conduct characteristic of the system of law and, in particular, of the system of public economic law.

Translated by Monika Zielińska

³⁵ M. Magdziarczyk, *Wolność działalności gospodarczej – od idei do zasady ustrojowej*, Studia Ekonomiczne. Zeszyty Naukowe Uniwersytetu Ekonomicznego w Katowicach 2018, no. 349, p. 139. Similarly K. Zapolska, *Ewolucja podstaw normatywnych wolności gospodarczej w Polsce w XX wieku*, *Miscellanea Historico-Iuridica*, vol. 18, no. 2, pp. 278–281.

³⁶ A. Bierć, *Sytuacja prawna przedsiębiorcy...*, p. 7; L. Bielecki, *Zasada wolności gospodarczej...*, p. 65.

³⁷ A. Bierć, *Sytuacja prawna przedsiębiorcy...*, p. 7.

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