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FREEDOM OF ECONOMIC ACTIVITY AND THE PUBLIC INTEREST IN LIGHT OF THE CONSTITUTION OF THE REPUBLIC OF POLAND AND THE CONSTITUTION OF THE ITALIAN REPUBLIC

ABSTRACT

The aim of this study is to analyze the constitutional regulations concerning the freedom to conduct business in Poland and Italy, with particular emphasis on the grounds for restricting this freedom and the significance of the principle of equality before the law for assessing the permissibility of restrictions imposed on entrepreneurs.

The study was prepared mainly using the formal and dogmatic method, supplemented by a comparative approach. It includes a description and systematization of legal norms, an interpretation of the relevant provisions of the Constitution of the Republic of Poland, the Entrepreneurs' Law and the Constitution of the Italian Republic. It also consists analysis of the practice of applying law in the Polish system, including the case law of the Constitutional Tribunal.

As it appears, in both legal systems, freedom of economic activity is one of the foundations of an economic system based on the social market economy model, but it has not been shaped as an absolute right. Restrictions are permissible only by statute and only to protect values of a public nature – referred to as important public interest in Poland and social utility in Italy.

Despite terminological and structural differences, both systems share common limits on state interference: the requirement of a statutory basis, the pursuit of the public interest, the principle of proportionality and the principle of equality before the law.

KEYWORDS: *freedom of economic activity, public interest, Constitution, restrictions on rights and freedoms, principle of equality*

RESEARCH METHODS

The article was prepared mainly using the formal and dogmatic method. It includes a description and systematization of legal norms, interpretation of provisions and analysis of the practice of applying law in the Polish system in comparison with the constitutional regulations in force in the Italian Republic.

INTRODUCTION

Freedom of economic activity constitutes one of the fundamental principles of modern democratic states. Its enshrinement in the constitutions of certain jurisdictions reflects the considerable importance that constitutional lawmakers attribute to this principle. The economic stability of the State, the effective protection of individual freedom, and the promotion of economic

development – thereby contributing to the growth of gross domestic product (GDP) – all require an appropriate legal framework.

The purpose of this article is to analyze existing legal solutions in order to assess whether the principle of freedom of economic activity, as enshrined in constitutions, is effectively implemented, or whether it is subject to certain limitations.

It appears that the current scope of protection for freedom of activity is directly dependent on the limits of interference permitted by national legal systems, which do not always align with general systemic principles.

The establishment of adequate legal mechanisms not only ensures the effective exercise of the freedom to conduct economic activity but, from the perspective of the Member States of the European Union, also provides a foundation for potential cross-border cooperation.

FREEDOM OF ECONOMIC ACTIVITY IN POLAND

Freedom of economic activity is one of the basic principles of the political system in both the Polish and Italian constitutional orders. In both countries, it has been protected by the Constitution, while retaining the possibility of introducing certain restrictions if they serve to pursue the public interest and protect other values protected by the Constitution (Etel, 2007).

In the Polish legal system, the issue of economic freedom is regulated in Chapter 1 of the Constitution of the Republic of Poland of 1997. Article 20 of the Constitution of the Republic of Poland states that: *The social market economy based on the freedom of economic activity, private property and solidarity, dialogue and cooperation of social partners is the basis of the economic system of the Republic of Poland* (Constitution of the Republic of Poland of 2 April 1997). Understood in this way, the economy is the basis of the economic system of Poland and is a determinant for the ordinary legislator in the process of drafting and amending laws and implementing EU solutions (Garlicki, Zubik, 2016).

A specific complement is Article 22 of the Constitution of the Republic of Poland, according to which the restriction of the freedom of economic activity is permissible only by law and only due to an important public interest (Machowska, 2025). Any restrictions on commencing, performing or terminating a business activity must result from an act of statutory rank and be justified

by the protection of values considered by the legislator to be important from the point of view of the public interest. An analysis of the above-mentioned provisions leads to the conclusion that the freedom of economic activity is not absolute (Goss, 2016; Roszkiewicz, 2022). The constitutional model of the economy is based on the search for a balance between the freedom of the individual and the realization of the public interest (Complak 2014).

The practical significance of constitutional restrictions on the freedom of economic activity is reflected in numerous statutory regulations in force in Poland. In particular, the legislator may establish solutions for the protection of health and the environment, including, inter alia, requirements for the production and trade of certain goods, sanitary standards, as well as regulations aimed at limiting the negative impact of economic activity on the natural environment (Kosikowski, 2005; Podkowik, 2015; Łyszkowski, 2024).

A prerequisite justifying state interference in the sphere of economic activity may also be the need to ensure public safety. This is reflected in the regulations on health and safety at work, concession and licensing requirements relating to certain types of economic activity (Sołtys, 2021), as well as in specific regulations concerning sectors of significant importance for the security of the state and citizens.

In addition, the constitutional principle of freedom of economic activity is developed at the statutory level in Article 2 of the Act of 6 March 2018 on the Law of Entrepreneurs, according to which *Starting, exercising and terminating business activity is free for everyone on equal terms* (Entrepreneurs' Law, 2018, Art. 2). This provision confirms that the freedom of economic activity covers the entire cycle of the entrepreneur's operation, from the beginning of the activity, through its conduct, to its completion. The provision of Article 2 of the Entrepreneurs' Law is a statutory specification of the principles resulting from Articles 20 and 22 of the Constitution of the Republic of Poland, emphasizing both economic freedom and the need for equal treatment of entrepreneurs by public authorities. Following E. Komierzyńska-Orlińska, it should be emphasized that *On the basis of constitutional solutions and ordinary laws, economic activity is – in principle – free, and therefore, in principle, it is neither prohibited nor mandatory. It depends on the will of a given subject* (Komierzyńska-Orlińska, 2019).

FREEDOM OF ECONOMIC ACTIVITY IN ITALY

Similar solutions regarding the constitutional protection of the freedom of economic activity have also been adopted in the Italian Republic, where the freedom to undertake economic activity has been regulated in Article 41 of the Constitution (de Vergottini, 2004). At the same time, this provision provides for the possibility of limiting it in order to protect values considered important from the point of view of social utility, indicating that „Private economic initiative is unfettered. It may not be carried out in contradiction with the principle of social utility or in a way that is detrimental to security, freedom or human dignity. The law lays down the programmes and appropriate forms of control necessary to ensure that public and private economic activity can be coordinated and directed towards the achievement of social objectives’ (Constitution of the Italian Republic, 1947).

Thus, Article 41 of the Constitution of the Italian Republic confers protection on private economic initiatives, while at the same time defining the limits of its exercise. The Italian legislator, as well as the Polish legislator, assumed that economic freedom is not absolute and may be subject to restrictions. Restrictions may be established only by law and only to protect values forming part of the public interest. As a result, economic activity has been subordinated not only to the criteria of economic efficiency, but also to the requirements resulting from the protection of social goods.

An important element of the Italian constitutional model is the principle of social utility (*utilità sociale*), according to which economic activity should be in accordance with the interest of the community. Consequently, the freedom to conduct a business is subject to restrictions aimed at protecting values such as public safety, health, the environment, workers’ rights or social justice (de Caria, 2013; Giubboni, 2018). The Constitution also grants the legislator the competence to determine programs and forms of control enabling the coordination and directing of economic activity towards the achievement of social goals (Kamińska, 2024).

The Constitutional Court of the Italian Republic supervises the constitutionality of laws restricting the freedom of economic activity, which interprets Article 41 of the Constitution and assesses the compatibility of the adopted statutory

solutions with the constitutional guarantees of economic freedom. As in Poland, the legislator may introduce solutions protecting health and the environment (Kamińska, 2022). Security considerations justify, in turn, occupational health and safety regulations and specific requirements for doing business in high-risk sectors, such as the financial or energy sectors. The possibility of restricting economic freedom is also related to the achievement of social goals. This is manifested in regulations concerning the protection of workers' rights, remuneration for work or the tax system, the structure of which serves to perform the fiscal and redistributive functions of the state.

GROUNDNS FOR RESTRICTING THE FREEDOM OF ECONOMIC ACTIVITY

The presented constitutional regulations in force in Poland and the Italian Republic indicate that the freedom of economic activity is not unlimited. Both the Polish and Italian legislators allowed for the possibility of state interference in the sphere of economic activity, making its admissibility conditional on the fulfilment of certain formal and material conditions. Despite the terminological and structural differences between the two regulations, common elements are noticeable that set the limits of permissible restrictions on the freedom of economic activity. In this respect, the requirement of a statutory basis for restrictions, the necessity to pursue the public interest, the principle of proportionality and the principle of equality before the law are of particular importance (Podkowik, 2015; Kaliszczak, Rabiej, 2021).

One of the basic guarantees of the protection of the freedom of economic activity remains the requirement of a statutory basis for its restrictions. In the Polish constitutional order, it was expressed in Article 22 of the Constitution of the Republic of Poland., while article 41 of the Constitution of the Italian Republic provides for the possibility of statutory determination of programmes and forms of control of economic activity. In both countries, the principle of exclusivity of the law has a guarantee function, ensuring the protection of entrepreneurs against excessive or arbitrary interference by public authorities.

The admissibility of restrictions on the freedom of economic activity in both legal systems has been linked to the need to protect certain values of a public nature.

The Polish legislator uses the concept of *important public interest*, which allows for the inclusion of various goods subject to protection, such as public safety, health, the natural environment or the rights of other entities. On the other hand, Article 41 of the Constitution of the Italian Republic refers to the principle of social utility (*utilità sociale*) and expressly provides that private economic activity may not harm health, the environment, safety, liberty or human dignity. As a consequence, the Italian constitutional model emphasizes the social function of economic activity, subordinating it to the implementation of values that go beyond purely economic criteria.

Despite the terminological differences, both *important public interest* and *social utility* are general clauses that allow the legislator to introduce restrictions to protect constitutional values. However, the mere fact of the existence of the public interest does not mean unlimited freedom of the legislator. Restrictions on the freedom of economic activity should be in an appropriate relation to the purpose they are intended to serve. In the Polish legal system, Article 31(3) of the Constitution of the Republic of Poland is of particular importance in this regard, according to which restrictions on constitutional freedoms and rights may be established only by law and only if they are necessary for the protection of the indicated values, such as state security, public order, the environment, health, public morality or the freedoms and rights of other persons (Szwajdler, Nowicki, 2009; Walaszek-Pyziół, 1994).

The principle of proportionality is thus an instrument that sets the limits of state interference in the sphere of individual freedom. This principle in essence means that actions taken by state authorities that interfere with the spheres of freedom or rights must be absolutely necessary and adapted to the assumed goals, and the related interference must not be excessive (Roszkiewicz, 2022). This principle also results in the need to balance various goods (values), the full realization of which is not possible, including balancing the common good with individual interest. The negative effects can never prevail and must always remain in reasonable proportion to the intended purpose and content of those freedoms and rights that are guaranteed by constitutional norms (see the judgment of the Constitutional Tribunal of 12 January 2000, P 11/98, Journal of Laws of 2000 No. 3, item 46).

The principle of equality before the law, according to which everyone is equal before the law and has the right to equal treatment by public authorities, also remains an important element in the assessment of the admissibility of restrictions on the freedom of economic activity. This principle also applies to entrepreneurs, excluding the possibility of arbitrary differentiation of their legal situation. It should be emphasized that: *the differentiation introduced must therefore be reasonably justified, and the criterion of differentiation must remain in appropriate proportion to the weight of the interests that are violated as a result of unequal treatment of similar entities. Moreover, it must be related to the principles, values and constitutional norms justifying the different treatment of similar entities* (Banaszak, 2012; Skrzydło, 2000; Tuleja, 2023).

CONCLUSIONS

The presented constitutional solutions in force in Poland and the Italian Republic indicate that in both legal systems the freedom of economic activity has been included among the basic principles of the economic system of the state. At the same time, the analysis of constitutional regulations leads to the conclusion that the freedom of economic activity has not been shaped as an absolute right. In both countries, it is possible to limit it, while the admissibility of the legislator's interference has been made conditional on the fulfilment of certain formal and substantive conditions and is subordinated to the protection of values considered to be particularly important from the point of view of the public interest.

A comparison of the solutions adopted by the legislators of Polish and the Italian Republic allows us to notice that despite the differences in the drafting of the two constitutions, their common assumption remains the need to maintain a balance between the freedom to conduct business activity and the need to protect other constitutional values. This means that state interference in the sphere of economic activity is not excluded, but it cannot be arbitrary. On the contrary, it should be consistent with the constitutional guarantees of the protection of rights and freedoms and meet the objectives considered to be legally justified.

The above remarks lead to the conclusion that it is essential for the assessment of the scope of protection of the freedom of economic activity not only the very existence of the constitutional foundations of this freedom, but also the determination of the limits of the legislator's permissible interference. In practice, the answer to the question about the scope of permissible normative restrictions affecting the situation of entrepreneurs and the criteria according to which their compliance with the constitutional standards of protection of rights and freedoms should be assessed is of particular importance. It is necessary to take into account the principle of equality and the need to ensure that restrictions on the freedom of economic activity do not lead to unjustified differentiation of the legal situation of entities in a comparable situation.

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