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PUBLIC INTEREST IN THE SOCIAL ECONOMY

Abstract

The social market economy requires multifaceted care to preserve its essence (standard) and the appropriate balance between ‘marketisation’ and ‘socialisation’. This should be fostered by defining the content of the ‘public interest’ clause, and the social interest in particular, when determining all circumstances related to the functioning of the social market economy because it is in the public (social) interest for the market economy to be linked to social needs. The public (social) interest is at the same time the premise for the formation and development of what is to be regarded as the ‘social economy’. The same interest requires that the created social economy should be supported by providing it with the assistance of both a subjective and functional nature.

KEYWORDS

public interest, social economy, social market economy, support, economy

SŁOWA KLUCZOWE

interes publiczny, ekonomia społeczna, społeczna gospodarka rynkowa, wsparcie, gospodarka

1. INTRODUCTION

Both the social economy and the public interest in it have their source in the constitutional principle and, at the same time, they constitute the basis of the Polish economic system, i.e., the social market economy. The social market economy, which is based on the freedom of economic activity, private ownership, solidarity, dialogue, and cooperation,¹ requires from both the legislator and the lawmakers, as well as from the entities participating in this economy, multi-faceted care to maintain its essence (standard) and appropriate proportions between ‘marketisation’ and ‘socialisation’. This care should be fostered by defining the content of the ‘public interest’ clause,² in particular, the social interest, when determining all the circumstances relating to the functioning of the social market economy since it is in the public (social) interest that the market economy becomes linked to social needs.

The public (social) interest is at the same time the premise for the formation and development of what is to be regarded as the ‘social economy’. The same interest requires that the created social economy should be supported by means of assistance of both personal and functional nature so that, as if in exchange for the ‘costs’ it incurs, it may benefit from a variety of support instruments and that these instruments are appropriately and optimally created by the legislator.

¹ Act of 2 April 1997 Constitution of the Republic of Poland, Journal of Laws No. 78, item 483, as amended.

² cf. A. Żurawik, *Wykładnia w prawie gospodarczym*, Wydawnictwo C.H. Beck, Warszawa 2021, chapter VIII, § 7, Legalis; E. Komierzyńska, M. Zdyb, *Klauzula interesu publicznego w działaniach administracji publicznej*, Annales Universitatis Mariae Curie-Skłodowska, Lublin – Polonia, Vol. LXIII, 2 2016, pp. 161-179; A. Żurawik, ‘*Interes publiczny*’, ‘*interes społeczny*’ i ‘*interes społecznie uzasadniony*’. *Próba dookreślenia pojęć*, ‘Ruch Prawniczy, Ekonomiczny i Socjologiczny’, Year LXXV, book 2, 2013, pp. 57-69; R. Blicharz, M. Kania, *Klauzula interesu publicznego w publicznym prawie gospodarczym*, Przegląd Ustawodawstwa Gospodarczego 2010 No. 5, pp. 12-21; W. Jakimowicz, *Wykładnia w prawie administracyjnym*, Kraków 2006, p. 121; M. Wyrzykowski, ‘*Interes społeczny*’ jako kategoria proceduralna, *Acta Universitatis Wratislaviensis*, No. 1022 Prawo CLXVIII, Wrocław 1990, p. 334.

2. THE SOCIAL MARKET ECONOMY AS A BASIS AND AREA OF FUNCTIONING OF THE SOCIAL ECONOMY

Article 20 of the Constitution of the Republic of Poland, proclaiming the social market economy, indicates that the state, through its organs, should shape the economy by establishing and applying laws allowing for a state of harmony between the free, predominantly private market economy and social needs, while at the same time ensuring conditions for the occurrence of dialogue and cooperation between social partners.³

In the above context, in conjunction with the principle of the social market economy, it seems pertinent to conclude that the economic system of Poland should be based on the union of the market economy and the social state. The state may intervene in the economy in order to mitigate the effects of the market mechanism with a view to maintaining macroeconomic equilibrium, programming and forecasting economic development, inspiring market participants to take into account the public interest, and creating actions to balance the market. The functioning of a completely free market would make it impossible to fulfil social needs.⁴ However, this type of state action should not be equated with the expansion of the social benefit zone.⁵

Both the need to ensure a state of compatibility between the market economy and social needs, as indicated above, as well as the maintenance of an appropriate balance between marketisation and socialisation of the economy are functions of the state. Their premises are social justice, as indicated in the Constitution of the Republic of Poland (Article 2), and, in a broader sense, the public interest, including the social interest.

The social market economy implies an order for the state to intervene in the economy but with the assumption that such an intervention will be carried out in

³ cf., e.g., P. Tuleja (ed.), *Konstytucja Rzeczypospolitej Polskiej. Komentarz*, 2nd Edition, LEX 2021, art. 20; W. Skrzydło, *Konstytucja Rzeczypospolitej Polskiej. Komentarz*, 7th edition, Lex 2013, Article 20. cf. also: A. Żurawik, *Wykładowa w prawie gospodarczym*, Wydawnictwo C.H. Beck, Warszawa 2021, Chapter II, § 2, Legalis; T. Włudyka, *Model społecznej gospodarki rynkowej a transformacja ustrojowa polskiej gospodarki. Analiza prawnogospodarcza*, Kraków 2002, p. 124 and 191 *et seq.*; J. Ciapała, *Konstytucyjna wolność działalności gospodarczej w Rzeczypospolitej Polskiej*, Szczecin 2009, p. 61 *et seq.*; A. Żurawik, *Zasada społecznej gospodarki rynkowej w konstytucji RP*, (in:) R. Hauser, Z. Niewiadomski, A. Wróbel (ed.), *System prawa administracyjnego*, T. 8A, *Publiczne prawo gospodarcze*, Warszawa 2013, pp. 442-449; T. Długosz, *Spoleczna gospodarka rynkowa jako kryterium organizacji gospodarki*, Gdańskie Studia Prawnicze, Vol. XXXVII, 2017, pp. 17-25.

⁴ cf. Judgement of the Constitutional Tribunal of 30 January 2001. K17/00, OTK 2001, No. 1, item 4.

⁵ Elsewhere K. Strzyczkowski, *Konstytucyjna zasada społecznej gospodarki rynkowej jako podstawa tworzenia i stosowania prawa*, (in:) C. Kosikowski (ed.), *Zasady ustroju społecznego i gospodarczego w procesie stosowania Konstytucji*, Warszawa 2005, pp. 18-19.

order to realise the public (social) interest in a statutory form, which follows from Article 22 of the Polish Constitution. This intervention should not aim to negate the essence of the market economy or promote and introduce a statist economy. However, intervention is also a need based on the identification of social needs, and not only those that arise from the diverse articulation of social groups, organisations, and institutions but also those that should be recognised and identified by the state as *sui generis* representation of the community and an entity embodying the social interest.

The caveat here is that, notwithstanding the functional approach to the social market economy as an area of association between the market economy and social needs, the existence of subjective elements within the social market economy must be noted. These include not only those performing economic activity and purchasers of their services (products) but also all those whom Article 20 of the Constitution of the Republic of Poland treats as social partners conducting dialogue and aiming at cooperation and solidarity. Among all such entities, one should also include those that perform their tasks as entities of the social economy.

3. THE SOCIAL ECONOMY AND ITS OBJECTIVES

In reaching back to the origins of the essence, character, and definition of the social economy, it should be mentioned that in Europe, in the 19th century, manifestations of such an economy were already seen, which was mainly associated with the cooperative, foundation and association movement.⁶ At the time, social economy institutions were perceived as those capable of reintegrating the economy into its social environment.

In Poland, during the Second Republic, on the basis of traditions already developed, the organisation of the social economy was developing and a tendency emerged towards *sui generis* organisational and institutional complementarity of associations, foundations, various types of social unions and cooperatives with respect to the activities of government and self-government administration bodies. After the war, when social and economic relations were dominated by a monopolistic conception of the state, including – in terms of defining, identifying, administering, and financing collective needs – the role of social economy entities was significantly reduced. Many institutions and social infrastructure

⁶ cf. E. Leś, *Gospodarka społeczna i przedsiębiorstwo społeczne. Przegląd koncepcji i dobrych praktyk*, (in:) E. Leś (ed.), *Gospodarka społeczna i przedsiębiorstwo społeczne. Wprowadzenie do problematyki*, Warszawa 2008, p. 38 *et seq.*

facilities belonging to non-state actors were abolished and their properties were nationalised.⁷

Renewed interest in the concept of the social economy as an instrument of social policy increased after 1989 as a result of changes in the relationship between the basic participants in economic and social processes: the state, entrepreneurs, social organisations, and consumers.⁸ Currently, under the doctrine, the social economy is also referred to as the solidarity economy, economy of solidarity, community economy, or civic economy. In subject terms, the social economy is sometimes equated with the third sector in the economy, as it includes organisations other than public (state) and market (commercial) organisations as they combine economic and social objectives within their framework.⁹

The material, functional, and subject matter scope of the social economy is delineated in the content of the 2002 ‘Charter of Principles for the Social Economy’.¹⁰ The social economy, according to this document, comprises organisations that are economic and social actors operating in all sectors. They are mainly distinguished by their objectives and their characteristic form of entrepreneurship. The social economy includes organisations such as cooperatives, mutual societies, associations, and foundations. They can be particularly active in certain areas such as social protection, social services, health care, banking, insurance, agricultural production, consumer issues, association work, crafts, housing, supplies, neighbourhood services, education and training, as well as in the area of culture, sport, and recreation.¹¹

In October 2022, the Social Economy Act¹² came into force. It adopts a subject-function definition of the social economy (*verba iuris*: economy), according to which the concept means – in accordance with Article 2(1) of the ES Act – ‘the activity of social economy entities for the benefit of the local community in the field of social and professional reintegration, creation of jobs for persons at risk of social exclusion and provision of social services, realised in the form of economic

⁷ cf. A. Piechowski, *Gospodarka społeczna i przedsiębiorstwo społeczne w Polsce. Tradycje i przykłady*, (in:) E. Leś (ed.), *Gospodarka społeczna i przedsiębiorstwo społeczne. Wprowadzenie do problematyki*, Warszawa 2008, p. 13 *et seq.*

⁸ cf. in particular A. Giza-Poleszczuk, J. Hausner, *Wprowadzenie – ekonomia społeczna i rozwój*, (in:) A. Giza-Poleszczuk, J. Hausner (ed.), *Ekonomia społeczna w Polsce: osiągnięcia, bariery rozwoju i potencjał w świetle wyników badań*, Warszawa 2008, p. 11 *et seq.*

⁹ cf. E. Leś, *op. cit.* p. 38.

¹⁰ The text of the Charter was published in: ‘Ekonomia Społeczna Kraków 2004. II Europejska Konferencja Ekonomii Społecznej – Materiały’, MPiPS, Warszawa 2005, pp. 4-17; cf. also: J. Blicharz, *Gospodarka społeczna: nowy model przedsiębiorczości w służbie interesu ogólnego?*, Przegład Prawa i Administracji CXXVIII, Wrocław 2022, pp. 27-30.

¹¹ ‘Karty zasad gospodarki społecznej’ from 2002, pp. 5-7; cf. also: D. Wacinkiewicz, *Usługi świadczone w interesie ogólnym jako element europejskiego modelu społecznego*, Studia Prawnicze KUL, 2 (78) Lublin 2019, pp. 255-273.

¹² cf. the Act of 5 August 2022 on the social economy, Journal of Laws, item 1812, hereinafter referred to as the ‘ES Act’.

activity, public benefit activity and other activity of a payable nature'. The latter is an activity in the spheres of education, culture and carried out by rural housewives' circles, assuming, however, that it is not an economic activity.

It should be noted that the list of social economy entities includes entities with a normatively established organisational and legal form (social cooperatives, workers' cooperatives), as well as entities taking various forms but distinguished by their activities and their nature (public benefit organisations, NGOs), and also entities with an undefined legal character and undefined organisational and legal form (workshops, establishments, centres, and clubs). The latter, having no established organisational framework and an ascribed capacity to act (legal capacity), can hardly be considered as entities of any activity.

The definition formulated in the aforementioned Act does not concern the essence of the social economy but is based on the recognition that it is a group of many entities of a diverse legal nature. These entities may, by changing their legal status, create another group of entities (organisational units), in which each such entity is called a social enterprise and treated as an entity of economic activity, as well as a public utility and other profit-making activity. At the same time, it is not possible to determine what legal character a social enterprise has, although it follows from the provisions of the Act that it is an 'embodiment' of a social economy entity, being at the same time the basic entity implementing social economy objectives through activities with a statutorily defined purpose.¹³

Taking advantage of the opportunity to apply for social enterprise status entails having the status of a social economy entity and thereby pursuing social objectives and thus acting in the public (social) interest. It should be noted that in the economic literature, social enterprises are seen, among other things, as organisations seeking business solutions to social problems. They create benefits for the community regardless of ownership or legal structure and with varying degrees of financial self-sufficiency, innovation, and social transformation.¹⁴

Social enterprises, on the basis of the Social Economy Act, are divided into two groups using the criterion of the purpose of their activity. Thus, there are enterprises dealing with social and professional reintegration of persons at risk of social exclusion and enterprises providing social services (Article 4 of the ES Act).

It is emphasised that all social economy entities are characterised (from a functional and organisational point of view) by a number of principles. These include, in particular, the primacy of the social objective over the capital, voluntary and open membership, democratic control by members, the combination of private interests (members' or users') with the social interest, the defence and application

¹³ cf. J. Blicharz, *Gospodarka społeczna: nowy model przedsiębiorczości w służbie interesu ogólnego?*, Przegląd Prawa i Administracji CXXVIII, Wrocław 2022, pp. 30-34.

¹⁴ cf. M. Bohdziewicz-Lulewicz, D. Murzyn, A. Pacut, *Tworzenie regulacji prawnej dotyczącej przedsiębiorstwa społecznego w Polsce w kontekście teorii demokracji deliberatywnej*, Horyzonty Polityki, 2022, Vol. 13, No. 43, p. 55.

of the principles of solidarity and responsibility, self-governance and independence from public authorities, the use of the majority of surpluses to achieve social objectives.¹⁵

4. THE IMPLEMENTATION OF THE PUBLIC INTEREST IN THE SOCIAL ECONOMY

If it is reasonable to assume that the public interest formula may be a premise for limiting the freedom of economic activity, and consequently for narrowing or changing the character of the market economy, one cannot, at the same time, consent to arbitrary actions taken in the name of the public interest, unidentified as to their purpose and content. The Constitution of the Republic of Poland, in creating the legal construction of a social market economy and indicating its pillars, as well as in treating the possibilities of limiting the freedom of economic activity as one of these pillars, does not give any consent to exclude or significantly restrict the freedom and negate the market economy, even in the name of an important public interest. In order to prevent the use of the general public interest for actions contrary to the principle of the social market economy, it is necessary to recognise, first, the primacy of the freedom of economic activity over the public interest and, second, the need to identify the public interest, in order to ascertain, by means of legal and social control, the correctness of the actions of state bodies and their adherence to the said principle. On the other hand, however, it should be noted that the public interest is the starting point for the creation of the social economy, which, in turn, is exercised to realise the indicated interest.

According to the legislator's will, all social economy entities should be oriented towards meeting the needs of the local community in terms of social and professional reintegration, creating jobs for people at risk of social exclusion and providing social services.¹⁶ Besides, the very term 'social economy' indicates the existence of a link between this type of activity and the social market economy.¹⁷

The social economy is (as a concept and a real institution) a specific consequence of the need and even necessity to respect the nature of the economy in

¹⁵ cf. M. Małecka-Lyszczek, *Zakres podmiotowy i klasyfikacja pojęcia „podmiot ekonomii społecznej”*, (in:) J. Blicharz L. Zacharko (ed.), *Trzeci sektor i ekonomia społeczna. Uwarunkowania prawne. Kierunki działań*, Prace Naukowe Wydziału Prawa, Administracji i Ekonomii Uniwersytetu Wrocławskiego, Wrocław 2017, p. 207; cf. also J. Defourny, *Social Enterprises in Western Europe: Some Insights from the EMES Experience*, UNDP/EMES Regional Workshop on Social Enterprises in CEE and CIS, Brussels, 11-12 December 2006.

¹⁶ cf. Article 2(1) of the ES Act.

¹⁷ cf. E. Przeszło, *Ekonomia społeczna w wymiarze podmiotowym i przedmiotowym – nowa konstrukcja prawna*, Przegląd Ustawodawstwa Gospodarczego 2023, No. 2, pp. 22-23.

general. This is because it should, in principle, function according to the rules of freedom (i.e., be a market economy), but at the same time, in accordance with the principle of a social market economy, it should take into account social needs, manifested through the demand for various types of social services as well as social and professional reintegration in the form of creating jobs for disadvantaged persons. These needs may be met by social economy entities, including mainly social enterprises. Their activity may and should be based both on striving to achieve a surplus of income over incurred costs and aiming to implement social objectives (needs). For its maintenance and prevention of excessive commercialization, this peculiar ‘hybridity’ of directions of social economy entities’ activity requires the interference of external entities, mainly public ones that have adequate funds at their disposal, which may be allocated to support the process of satisfying social needs.¹⁸

5. PUBLIC INTEREST AS A RATIONALE FOR SUPPORTING THE SOCIAL ECONOMY

When treating support in the area of the social economy¹⁹ one should, first of all, notice that it is mainly subjective and personalised. It usually concerns a certain group of entities, and these may be exclusively social economy entities or social enterprises but at the same time such support may be individualised due to the different degree of fulfilment of conditions for benefiting from the support, and thus, it may be selective. The support is also of a functional (object-oriented) nature and is connected with a general delineation of a number of activities addressed to all social economy entities (including social enterprises) but with the indication that it is intended for the ‘development of social economy’.²⁰

Support for the social economy seems to be primarily linked to the social market economy and, consequently, to the public interest in associating the market (commercial) economy with social needs. It should be noted that the role of the state is to act as a ‘super-arbitrator’ and, at the same time, as a decision-maker, aiming to reconcile various types of interests and various oppositions that often arise in areas of social and economic functioning. This role is reduced to, among other things, creating the conditions for the provision of assistance (support) and the actual provision of such assistance to all those who should, in view of their

¹⁸ M. Chomańska, *Możliwości wsparcia publicznego dla podmiotów ekonomii społecznej realizujących zadania publiczne*, *Ekonomia Społeczna*, 2014, No. 2, p. 21 *et seq.*

¹⁹ M. Schröder, *Gospodarka społeczna jako część polskiego systemu gospodarczego. Rozważania definicyjne*, <https://repozytorium.bg.ug.edu.pl> (accessed: 1 April 2023), p. 262 *et seq.*

²⁰ This is stated in Section III of the ES Act.

objectives of action, provide social services and create jobs for those in need. After all, these objectives and their implementation are in close correlation with the public interest.²¹

It should be noted, moreover, that in a situation where it is possible to limit the freedom, thus narrowing the area of the rights of economic (including social) actors, and, consequently, their autonomy and freedoms, it should be possible to support those actors, in accordance with the content of the principle of a social market economy. Taking away a certain amount of their freedom from entrepreneurs and other economic actors on the basis of a public interest premise, therefore, justifies providing them with support, also in the public interest. This support, too, should be based on a premise of public interest and entail the need to take into account the interest of economic operators in the free market and to combine it with the public (social) interest in a simultaneous, even, and proportionate manner.

5. CONCLUSIONS

The public interest is a factor which is relevant to the social market economy, and within it, to the social economy that is motivated by the public interest, which is both its premise and its objective.

At the heart of the construction of the social market economy is the assumption that it is necessary, for reasons of public interest, to associate the organisation and functioning of the market economy with social needs. In turn, the social economy as a sum of entities and relevant functionalities is, as if by nature, oriented towards the realisation of the public interest. This interest should be the guideline for the state (its bodies) when creating the normative structure and delimiting the area of activity of the social economy but also, and perhaps above all, for providing comprehensive support to these entities. It is necessary from the perspective of the role and place of the social economy and social needs.

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²¹ cf. A. Powałowski, (in:) A. Powałowski, M. Szczepaniec, A. Kociołek-Pęksa, *Wsparcie dla przedsiębiorców, aspekt prawny, ekonomiczny i społeczny*, Warszawa 2021, p. 2 *et seq.*

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