

Wroclaw, 29<sup>th</sup> November 2021

mgr Szymon Goździk  
Department of Public Economic Law  
Institute of Administration  
Faculty of Law, Administration and Economics  
University of Wroclaw

### **Summary of doctoral dissertation**

#### **„Freedom of economic activity in the rail transport sector”**

The doctoral dissertation I prepared is entitled "Freedom of economic activity in the rail transport sector". Its main research aim was to investigate the scope of freedom of economic activity in the social market economy in the rail transport sector in Poland. For this reason, the work includes considerations aimed at determining the place of regulation of the rail transport sector in the system of functions performed by public authority with regard to the economy. For this purpose, legal concepts regarding the freedom of economic activity in the rail transport sector were examined, including the intentions of the EU legislator, taking into account the process of law implementation by selected Member States, especially Poland. The assessment of the legitimacy of the examined legislative concepts was made from the perspective of the protection of the value of freedom of economic activity in the social market economy, with the auxiliary use of economic achievements, analysis of the law.

In order to achieve the set aims, the study mainly used the formal-dogmatic method. With its use, an analysis of the applicable legal acts and views of the doctrine regarding the freedom of economic activity in the rail transport sector was carried out. This allowed for the determination of the elements specific to the legal structure of the rail transport sector in Poland and the European Union, their characteristics and an indication of the links between them. Additionally, the historical method was used, which made it possible to present the development of the institution of regulated economic activity in the railway sector and to take into account changes in the scope of the examined regulations. To some extent, the legal-comparative method was also used by referring to similar legal structures in other European countries. In addition, due to the reference to national jurisprudence and statistical data, the empirical method was also used.

In order to achieve the aims set above, the following issues were discussed in the order presented. At the beginning, an analysis of legal doctrines was carried out in a historical perspective in relation to the role of the state in the economy, while showing the genesis of the state's function in the economy, creating the basis for the debate undertaken in the work on the scope of state interference and thus the freedom of economic activity. Then, an axiological approach to the concept of freedom of economic activity is presented, as well as its definition and position in relation to other constitutional values in the social market economy. The essence of economic regulation in general, followed by sectoral regulation, with an emphasis on the subject of this regulation, is then discussed. In the next chapter, the considerations were transferred to the railway sector, describing its specificity based primarily on the views of the doctrine. Next, the activities of the EU legislator are discussed - the creation and legal form of the Single European Railway Area, and thus the effects of the liberalization process of the European Union railway market. Then the considerations were made more specific on the basis of the Polish railway market. This provided the basis for assessing the extent to which the legislator achieved the assumed aims and allowed to verify the correctness of the direction chosen by the legislator and individual legal institutions. At the end, all conclusions and observations resulting from the previous chapters were collected, proposing *de lege lata* and *de lege ferenda* solutions. It was indicated to what extent the freedom of economic activity is present in the rail transport sector and in which areas it is desirable to increase and decrease it. This assessment was made on the basis of the value of the freedom of economic activity in the social market economy and with the auxiliary use of the theory of economic analysis of law.

The study established that the state, while implementing its functions by regulating the rail transport sector, has at its disposal a number of legal solutions to interfere with the behavior of entities on this market and to stimulate the desired behavior, in addition to the activities that make up the economic police and economic regulation. These solutions were examined in the following areas: access to infrastructure, measures to support the economy of the rail transport sector, financing of services on the passenger transport market, tasks carried out by the market regulator, and forms of regulation and economic police in relation to the doctrine, and then the EU and Polish legislator and available practice.

It was established that the functions of public economic administration within the railway transport sector, including regulatory function. Freedom of economic activity in the railway transport sector is functionally related to the state institution, which realizes the freedom of actions of entrepreneurs in this sector of the economy. On the other hand, this freedom is



limited by the state that performs its functions in the rail transport sector. Article 22 of the Constitution of The Republic of Poland provides for two conditions for the legality of restrictions on the freedom of economic activity, but it is the substantive legal condition, i.e. the requirement to identify an important public reasons, that distinguishes freedom of economic activity in the rail transport sector. These are values related to the external security of the state (e.g. the use of railways for military purposes), internal security (protection of life and health against the risk resulting from the use of technical devices on the railroad), security of the state's economic interests (e.g. more efficient transport of mass goods compared to road transport), environmental protection (compared to road transport, especially in the case of rail freight) and ensuring the availability and quality of transport services (pro-competitive regulation of the rail transport sector).

It was established in the paper that the increase in competition in the rail transport sector should lead to a gradual limitation of pro-competitive regulation. However, it is impossible to indicate the mechanisms in Polish national law that create legal institutions responsible for verifying the fulfillment of these criteria. Such verification does not, in principle, take place in the jurisprudence and activities of the President of the Office of Rail Transport. The achievements of the economic analysis of the law point out that the regulation of the rail transport sector as well as the entire public economic law should also be economically effective, therefore it should be verified whether the increasing expenditure from public funds gives the society that incurs them benefits that at least balance these outlays.

The study shows that the freedom of economic activity in the rail transport sector is significantly limited. Its proper protection is essential for the development of the rail transport sector in such a way that it serves society as effectively as possible. This forces striving to improve the efficiency of this sector while reducing the costs of its operation. However, this does not mean that the state should stop exercising its regulatory function in this sector. The paper shows that one should strive to improve the instruments for implementing the state's functions in the rail transport sector, taking into account the freedom of economic activity and the consistent treatment of the assumptions regarding this freedom contained primarily in the Constitution of the Republic of Poland, but also in economic doctrines indicating the advantages of market mechanisms.

  
Szymon Goździk