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## STRUCTURE AND CONTENT OF THE CONSTITUTIONAL SOCIAL MARKET ECONOMY PRINCIPLE — GUIDELINES FOR THE LEGISLATOR

**Abstract:** The social market economy principle is a new principle in Polish constitutionalism, determining the economic system of the Republic of Poland. Its role is primarily to point out a set of values defining a limit for the legislature regarding its undoubtedly broad autonomy in the selection of detailed solutions to construct the economic state order. As a rule of constitutional interpretation, it also provides guidelines for the interpretation of further, specific provisions of the Basic Law. The specificity of the discussed principle lies in its multi-stage construction, consisting in establishing a general social market economy principle, then filling it out with the detailed contents by further constitutional principles, especially the principle of freedom of economic activities and the protection of property.

**Keywords:** The social market economy principle, The Polish Constitution, Constitutional Tribunal, Polish legislator, The Freedoms, Rights And Obligations Of Persons And Citizens

### 1. SOCIO-ECONOMIC SYSTEM IN THE CONSTITUTION OF 2ND APRIL 1997

The Polish Constitution of April 2 1997 contains no specific chapter regulating the grounds of a socio-economic system, as did the communist constitution of 1952. Instead, during the political system transformation, a new Chapter “Fundamentals of political and economic system”<sup>1</sup> was introduced into the Constitution of December 29th 1989, by way of amendment, where two principles important in determining the economic system were included, namely the principle of freedom of establishment, regardless of the form of property (Article 6) and the principle of

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<sup>1</sup> See more J. Ciapała, *The issues of legal regulation of freedom to undertake economic activity in the context of political transformations in Poland. Selected legal and political aspects*, „Przeгляд Prawa i Administracji” 68, 2005, p. 53.

protection of property and inheritance rights (Article 7). This was undoubtedly to serve to emphasise the departure from the principles on which the socio-economic order was founded in the Constitution of the People's Republic of Poland.

The fundamentals of the economic system of the Republic of Poland (RoP) are defined by provisions of Articles 20–24 of the RoP Constitution. The first of these provisions formulates the social market economy principle and provides a constitutional definition of that term. The provision of Article 21 formulates the principle of protection of property and inheritance rights, and determines the constitutional conditions for the admissibility of expropriation. The next provision of Article 22 enacts the principle of freedom of the economic activity, Article 23 the principle of protection of family farms as the basis for the Polish agricultural system, while the latter provision is the principle of employment protection (Article 24).

## 2. THE NATURE AND IMPORTANCE OF THE SOCIAL MARKET ECONOMY IN THE ROP CONSTITUTION

The social market economy principle is expressly formulated as the principle of the system, in the text of Basic Law, and has no equivalent in earlier Polish constitutions. As indicated above, its introduction to Chapter I was not accompanied by any deeper doctrinal reflection, although the juridical social market economy concept — as rightly pointed out — is not at all clear and unambiguous.<sup>2</sup>

The discussion in the Constitutional Committee of the National Assembly was clearly referenced to the German model in this regard. However, it should be pointed out that although the social market economy concept (*soziale Marktwirtschaft*) was earlier developed in German theory and practice, this was not expressly formulated in German Basic Law of 1949. The German Constitution confined only to the formula of the Social Rule-of-Law State, not referring explicitly to the question of the nature of the economic system.

Moreover, it should be borne in mind that the very concept of the social market economy and the economic idea based on it, had in Germany its critics right from the beginning. In fact, it was believed that the combination of assumptions of the market economy with elements of social policy was unrealistic and constituted the source of conflicts.<sup>3</sup>

Likewise did the Polish legislator, by entering directly to the content of Basic Law Article 20 of the Constitution, providing that “a social market economy based

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<sup>2</sup> A. Domańska, *Constitutional Basis for the Economic System of Poland*, Warsaw 2001, p. 99. B. Banaszak points out the absence of a definition of the social market economy widely adopted by the constitutional law doctrine — *idem*, *The Constitution of the Republic of Poland. Gloss on Law*, Warsaw 2010, p. 125.

<sup>3</sup> See T. Włudyka, *The Model of the Social Market Economy and Political Transformation of the Polish Economy. Legal and Economic Analysis*, Krakow 2002, p. 87 et seq.

on the freedom of economic activity, private ownership and solidarity, dialogue and cooperation between social partners is the basis of the economic system of Poland”.<sup>4</sup>

It should be noted that, during the work of CC NA, and even later, there was no doubt regarding the very idea of the social market economy, but there was no consensus on the need for determining directly in the Constitution the economic system of the Republic of Poland. In dispute was also the relation of the discussed issue to the principle of social justice, constituting only a so-called material element of the principle of the Rule-of-Law State. On this last point it was, in particular, raised that within “the social market economy” and “the welfare state” there is a principle of social justice contained. That was found in the Constitution’s Article 2.<sup>5</sup> It was also pointed out — which is true — that there was no need to refine the social market economy in that was based, among others, on economic freedom and private property. These features are in fact intrinsically mixed in the characteristics of such an economy.<sup>6</sup>

Irrespective of these concerns the provision of Article 20 of the Constitution and other provisions listed above give grounds for believing that the current RoP Constitution provides a clear basis for state involvement in the economy, though, given the generality of the constitutional provisions, it is not a complex regulation, nor imposing the ordinary legislature adoption of the “specifically defined economic system”.<sup>7</sup> Without a doubt, however — as emphasised by Polish doctrine — it sets out for the legislature a framework for a socio-economic system and, above all, stresses that the Basic Law is not neutral on the economy,<sup>8</sup> and thus implies the need for State influence — within the limits specified by the Constitution — on the economy because of certain social objectives and largely determines both the nature and instruments of the state’s activity in the economic sphere.

Assuming in Article 20 that the basis of the economic system is the social market economy, this makes the RoP Constitution an economic constitution, and therefore the constitution that directly formulates an idea of the economic order, which binds the following public authorities: parliament, government, and other economic actors.<sup>9</sup>

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<sup>4</sup> Similar provisions are included, among others, in the Preamble to the Constitution of Hungary, stating that the State implements the social market economy and the Constitution of Slovakia, adopting the principle of the socially determined market economy. Similar provisions are present in the Constitutions of Italy and Spain.

<sup>5</sup> “The Republic of Poland shall be a democratic State ruled by law and implementing the principles of social justice” (Article 2).

<sup>6</sup> K. Działocha, CC NA Bulletin No. XLIV, p. 84–85.

<sup>7</sup> L. Garlicki, *The Constitution of the Republic of Poland. Gloss on Law. General Comments Regarding Chapter I*, vol. V, Warsaw 2007, p. 4.

<sup>8</sup> Among others Z. Witkowski, *The principle of social market economy as a basis for the economic system of the Third Republic of Poland — freedom of economic activity* [in:] *Changes in Polish law*, ed. E. Kustra, vol. II, Toruń 2002, p. 7; and K. Strzyczkowski, *Constitutional principle of the social market economy as the basis for the creation and application of the law*, [in:] *Principles of Social and Economic System in the Process of Applying the Constitution*, ed. C. Kosikowski, Warsaw 2005, p. 9. See also L. Garlicki, *The Constitution of the Republic of Poland...*, p. 4.

<sup>9</sup> K. Strzyczkowski, *op. cit.*, p. 9.

Among the above-mentioned principles of the economic system, the principle formulated in Article 20 has the most general nature (general clause), and therefore it opens up a group of constitutional provisions relating to the economic system. In comparison with other system principles, the principle in question is also distinguished by the mode of recognising the system as a principle-principles, namely as a three-stage regulation. As pointed out by L. Garlicki it is expressed in the assumption that first a general principle was formulated (the social market economy), then — while remaining at a high level of abstraction — the basic features (pillars) of the economy were stated and, finally, the binding nature of that provision was stressed, by ordering that such an economic order constitutes the base of the economic system of the Republic of Poland.<sup>10</sup>

Regardless of the difficulties in defining the social market economy concept, the doctrine is consistent about the fact that it is the constitutionalisation that gives it a legal dimension, and to the social market economy principle and binding nature of the binding normative principle.<sup>11</sup> However, that rule — as the rest of the system's rules — has the nature of the programme norm and may not form a basis for any claims by citizens on taking appropriate steps, particularly by using the remedy of amparo.<sup>12</sup>

The content of the social market economy principle and the resulting directive for the legislator (and more broadly for public authorities) from it may be analysed in terms of their negative and positive aspects.

The negative aspect, undoubtedly easier to be identified, should be associated with the objective of the political (economic) transformation, initiated in Poland in 1989, and whose crowning achievement was the enactment of the Constitution of 1997. Therefore, in that sense — as also emphasised by the doctrine — the recognition stating that the basis of the economic system of the RoP is the social market economy, on the one hand means a constitutional ban on a return of a so-called socialist planned economy and centralised economy administration (control), and on the other hand, the ban on refraining by the State from any interference in the market mechanisms' functioning. As pointed out by L. Garlicki, the adoption of each of these extreme models would be a violation of the Constitution<sup>13</sup>, although on the other hand, while assuming considerable freedom of the legislature in the economic sphere, in very exceptional circumstances the plea of breach of Article 20 of the Constitution might be justified.

In positive terms, the content of the social market economy principle should be associated with the social market economy concept, formed by economic

<sup>10</sup> L. Garlicki, *The Constitution of the Republic of Poland...*, p. 5.

<sup>11</sup> See, for example C. Banasiński, *Constitutional legal base in the economy*, [in:] *The Constitution — The Constitutional Tribunal. Collection of studies*, ed. C. Banasiński, J. Oniszczuk, Warsaw 1998, p. 25. See also K. Strzyczkowski, *Constitutional principle of social market economies...*, p. 15.

<sup>12</sup> See also B. Banaszak, *op. cit.*, p. 125.

<sup>13</sup> L. Garlicki, *The Constitution of the Republic of Poland...*, due to the Article 20, p. 7.

thought,<sup>14</sup> and assuming — as already mentioned above — a combination of the free market economy mechanisms with state responsibility for correcting or mitigating the shortcomings of the market mechanisms and free competition.

Such an interpretation of the social market economy principle, and especially the role of the State in the economy also arises from the Polish Constitutional Tribunal's jurisprudence, according to which "the social market economy means the adoption of State co-responsibility for the state economy".<sup>15</sup>

It follows from the Constitutional Tribunal's jurisprudence that, in terms of Article 20 of the Constitution, the social market economy is not only a required economic model, but also a social order picture required by the legislator. CT refers to the interpretation of this concept, to its understanding, that has been functioning for years in the economic and constitutional doctrine. Accordingly, it held that the RoP economic system should be based on linking the following two basic ideas: the market economy and the welfare state. The State may: 1. interfere in economic relations, depending on prosperity or recession, so as to mitigate the effects of market mechanisms in order to maintain the macroeconomic balance, programme and forecast economic growth at the macroeconomic level; inspire market participants to include in their activities the interest of the State, create activities balancing the market; and also perform general social functions. Thus, the wording of social market economy included in Article 20 of the Constitution should be understood as the admissibility of correcting by the State the rights of the market and implementing the specific social needs that may not be met with fully-functioning free market rights.

The Constitutional Tribunal in its jurisprudence links the strict importance of the social market economy with the principle of common good and social justice. "Without respect for democracy and social justice principles, there might be no social market economy". Consequently, the Tribunal refers that notion and the concept of solidarity to the principle of social justice, and the concept of dialogue and cooperation between social partners to the principle of a democratic state.<sup>16</sup>

### 3. PILLARS OF THE SOCIAL MARKET ECONOMY IN THE LIGHT OF ARTICLE 20 OF THE ROP CONSTITUTION

In accordance with Article 20 of the RoP Constitution, a social market economy is an economy which embodies all of the following principles: freedom of economic activity, private property, solidarity, dialogue, and cooperation between social partners. The Constitutional Tribunal (CT) treats these values comprehen-

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<sup>14</sup> See K. Strzykowski, *op. cit.*, p. 15.

<sup>15</sup> Judgement of 30th January 2001, K 17/00.

<sup>16</sup> Judgement K 17/00.

sively and complementarily, or it recognises them as a whole, and does not distinguish any of them, and recognises that these values are so linked, that they may be both mutually supportive or restrictive. Hence, according to the CT, it is not enough to rely on a breach of any of the values indicated in Article 20, it is still necessary to determine whether and to what extent such a breach occurred in view of the other values in order to maintain the necessary balance between them.<sup>17</sup>

From the economic issues point of view, the freedom of economic activity indicated in the first place in Article 20 is of undoubtedly essential significance, having its confirmation and development in Article 22 of the Constitution. That last provision — as already mentioned — was invariably included in Chapter I in the subsequent versions of the draft constitution, but before introduction of the current Article 20 it consisted of two paragraphs: “The Republic shall ensure the freedom of economic activity”. “Restriction on the freedom of economic activity shall be permitted only by statute, and only for important public reasons.” Article 22, as a result of the introduction of the current Article 20, was restricted to only one paragraph, stating only the reasons for restriction of freedom, while resigning from the following formula “the Republic of Poland shall ensure the freedom of economic activity”.<sup>18</sup> According to the Constitutional Tribunal the freedom of economic activity “in light of the Constitution is twofold: it is simultaneously a system’s principle and foundation of the formulation of certain rights”. The Constitution clearly exposes the first of those aspects,<sup>19</sup> since Article 20 and Article 22 have been included in Chapter I of the Constitution and have not found any direct expression and development in Chapter II. The freedom of economic activity has therefore, in this respect, a nature different than the nature of private property, where the constitutional principles deriving from Article 20 and Article 21 of the Constitution find their counterpart in the subjective-right aspect included in Article 64 of the Constitution”.<sup>20</sup>

It should also be noted that some aspects of the freedom of economic activity are reflected and laid down in the specific provisions of Chapter II. This applies in particular to the freedom of contract in the economic sphere, as derived in the jurisprudence of the Constitutional Tribunal from Article 31, paragraph 1 of the Constitution.<sup>21</sup>

<sup>17</sup> See also Judgement of 7th June 2001, K 20/00, and Judgement K 17/00.

<sup>18</sup> See more on this subject in S. Jarosz-Żukowska, *Nature and importance of freedoms and rights of an individual expressed in Chapter I of the RoP Constitution*, [in:] *Freedom and rights of an individual in the RoP Constitution*, vol. I. *Ideas and Guiding Principles of Liberty of the Constitutional Regulation and Rights of an Individual in Poland*, Warsaw 2010, p. 115.

<sup>19</sup> Similarly, in the Judgement of 14th December 2004, K 25/03 the CT pointed out that the very place of Article 22 in the scheme of the Constitution proves “that it is about one of the fundamental principles of the law and the entire state system. This provision, in addition to the text of Article 20 of the Constitution, creates the basis for the Polish economic system [...]”.

<sup>20</sup> Judgement SK of 18th February 2003, 24/02.

<sup>21</sup> *Ibid.*

As far as the personal scope of the freedom of establishment included in Articles 20 and 22 of the Constitution is concerned — as demonstrated by the Constitutional Tribunal — the freedom formula may not be used in relation to the State and other public institutions, in which a direct or indirect impact on the economy is not excluded, but which activities must be subject to another regime in the constitutional aspect, than the activities of private entities.<sup>22</sup> According to the CT subject to the constitutional freedom of economic activity are “natural persons or other entities that exercise the rights and freedoms of man and citizen”.<sup>23</sup>

According to the CT’s jurisprudence the State and other public institutions, including public authorities, may not be recipients of powers arising from constitutional guarantees for the freedom of economic activity. The state may be the only entity obliged to respect the rights of individuals and entities from outside of the “public sector”.

The constitutional principle of the freedom of economic activity may not involve any public institutions’ rights towards the State itself, including any claims for its failure to intervene. Confirmation of the thesis that the principle of economic freedom does not apply to the public economic sector is a systematic interpretation of the provision of Article 20 of the Constitution, and above all, association between economic activity and private property. However, the latter, while widely understood, certainly does not refer to the State, public institutions, or government agencies.<sup>24</sup>

This does not mean that the State may completely freely shape its participation in economic life, or even refrain from such participation. Nevertheless, considering that — according to the CT — that activity must be exceptional, justified by the protection of other constitutional values, serve the social character and sustainable development of the national economy (Article 5 of the Constitution). The boundaries of this activity are free competition, non-preferences for state entities and non-discrimination of private actors.<sup>25</sup>

The special status of the “public sector in economic activity” does not preclude the imposition of special conditions and restrictions in this regard. Basically its functioning is based, in the constitutional aspect, on provisions of Chapter X of the Constitution, which governs not only the budgetary issues, but also authorises the legislature to regulate the management of the Treasury assets (Article 218),

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<sup>22</sup> Judgement of 7th May 2001, K 19/00.

<sup>23</sup> Judgement K 19/00 and of 8th July 2008 r., K 46/07. The CT’s view is criticised by the doctrine, not least because of the regulations of the European Union law granting economic freedom to entities in both the private and public sector. In the doctrine economic freedom is granted to public entities for example by M. Szydło, *The State as an Entrepreneur. Selected legal issues*. Krakow 1998. For a discussion on the Polish doctrine’s views on that subject, see B. Banaszak, *op. cit.*, p. 128.

<sup>24</sup> Judgement 19/00.

<sup>25</sup> See more L. Garlicki, M. Zubik, *The Constitution of the Republic of Poland. Gloss on Law, Article 20*, Warsaw 2016, pp. 517–532.

rules and procedures for purchasing, selling, and encumbering real estate, stocks or shares or issuance of securities by the Treasury, National Bank of Poland or other state legal persons. Article 216, paragraph 2 of the Constitution may be considered as a mandate for a very profound legislative interference in the economic activity of state legal persons. According to the Constitutional Tribunal, this provision should be interpreted *a maiori ad minus*.<sup>26</sup>

According to the CT the constitutional principle of freedom of economic activity does not generally apply to the State's measures taken in the form of its direct or indirect conduct of such activity, but works indirectly as a ban on expansion of the public sector over the constitutionally legitimate needs and the imperative of compliance with the principle of free economy competition and does not infringe the private rights of non-public entities. If, in justified cases, the State decides to participate in economic life, it has the freedom to shape legal institutions within which such participation occurs. It may therefore choose private law institutions, create new organisational forms, while granting them legal personality (e.g. state enterprises), or permit to conduct such activities to budgetary units with no legal personality. The status of "public economic entities" is different from the status of private entities, especially in terms of the State's possibility to create, liquidate, and define the scope and forms of their activities and organisational structures.<sup>27</sup>

According to the CT the restrictions on the State's economic activity and the freedom of the legislature in matters of the public economic sector, refer also to shaping of the internal structure and principles of their functioning, and hence to the system of remuneration of their executives. Since the State has discretion in determining the forms of organisation and principles of functioning of certain units, it may also determine the amounts of remuneration, especially of those holding managerial positions. Identifying the principles of the Treasury's assets management is the legislature's responsibility.<sup>28</sup>

Thus, from the standpoint of Article 20 of the Constitution public entities are to operate not only according to the "pure" market rules (the right of supply and demand), but should introduce in the economy the social elements that are complementary and the basis for some adjustments to the market rules (Case K 19/00).

The second "market's" element of the principle discussed herein is private property, referred to directly only in Article 20 of the Constitution, but without defining it. This concept must be understood broadly, as much as possible, in the sense that private property should not be equated as owned solely by individuals, but also by legal persons under private law, and even — according to the jurisdiction of the CT — that part of municipal property, which is not directly serving public use.<sup>29</sup>

<sup>26</sup> Ibid.

<sup>27</sup> Ibid.

<sup>28</sup> Judgement K 19/00 and Judgement of 10th April 2001, U 7/00.

<sup>29</sup> See also Judgement of CT of 12th June 2000, K 8/98.



The act that Article 20 of the Constitution refers only to private property, does not mean that it excludes the existence (protection) of the ownership of other (public) entities.<sup>30</sup> Moreover, such an interpretation, would be contradicted by Article 21 of the Constitution, formulating the principle of protection of ownership in every form, and thus also public ownership. The literature reasonably pays attention to the fact that “the social market economy is a foundation of the economic system of the Republic of Poland, but it does not constitute its entirety”, while the Constitution allows an exception in the case of economic solutions, in which public property replaces private property (of the Treasury — Article 218, local government units — Article 165, paragraph 1 or cooperative property), and instead of the freedom of management, various types of regulating and planning actions are taken by public authorities. According to P. Winczorek, the possibility of such an interpretation of Article 20 rises from Article 1 (common good), Article 2 (social justice) and Article 22, admitting an exceptional restriction to the freedom of economic activity.<sup>31</sup>

Instead, from the explicit reference to private property, which is one of the pillars of the social market economy, results the legislature’s obligation to ensure special protection of private property,<sup>32</sup> which finds its legitimacy in Article 64 of the Constitution, which provides for guarantees of ownership rights, and other property and inheritance rights.

The exposing of private property in Article 20 is also interpreted by the doctrine as an instruction addressed to the legislature to settle ownership relations, thus completing the processes of privatisation and reprivatisation, and in terms of a negative aspect, as a ban on taking actions infringing upon private property, including especially the process of nationalization.<sup>33</sup>

The values that determine the social dimension of the market economy in the light of Article 20 of the Constitution are solidarity, dialogue, and cooperation between social partners.

While the above-cited concepts of freedom of economic activity and private property have a generally established legal meaning, the concepts of solidarity, dialogue, and cooperation between social partners have the nature of yet undefined concepts, and what is more, they have not found their instantiation in the further detailed constitutional provisions.

Attempts to define these concepts are taken both by doctrine and by jurisprudence of the Constitutional Tribunal. Solidarity is understood by the literature as “mutual support and assistance when needed” and the dialogue and cooperation

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<sup>30</sup> See also K. Strzyczkowski, *op. cit.*, p. 19.

<sup>31</sup> P. Winczorek, *Gloss on Law to the Constitution of the Republic of Poland of 2nd April 1997*, Warsaw 2000, p. 33.

<sup>32</sup> L. Garlicki, *The Constitution of the Republic of Poland. Gloss on Law. Comments on Article 20*, p. 10.

<sup>33</sup> F.ex. B. Banaszak, *op. cit.*, p. 129.

between social partners as an organised exchange of information and opinions directed towards reaching an agreement between the parties having dissimilar views or interests". These partners include: trade unions, employers' organisations, local government businesses, and representatives of public authorities as representatives of the State's or local communities' interests. An institution to serve the dialogue and cooperation of partners in Poland is the so-called Tripartite Committee representing the national teams of government, employers, and employees.<sup>34</sup>

Therefore, it must be assumed that solidarity, dialogue, and cooperation of social partners, which support the social market economy, assume a balance of interests of the market participants, and at the same time respect their autonomy and amicable settling of disputes. The CT sees the sources of those values in the philosophy of social solidarity announcing compatibility and community of interests of all individuals and social groups within a given community, as well as the obligation to contribute to society.<sup>35</sup>

Social solidarity also assumes that "the burden of the economic crisis should be distributed to all the social strata"<sup>36</sup> as well the constitutional obligation of sharing the cost of social transformation by all the social partners, and thus also by employers. The CT understands this obligation so that "all citizens, both employers and employees are to an extent appropriate to their capabilities, required to sacrifice some of their interests for the common good".<sup>37</sup>

As indicated above, the amicable settling of disputes, being one of the elements of balancing the interests of the market participants is also supported by Article 59 of the Constitution, granting the trade unions and employers' organisations the right to bargain, in particular collective bargaining and to conclude collective agreements and other arrangements (paragraph 2), as well as guaranteeing trade unions the right to organise workers strikes and other forms of protest within the limits specified in the Act (paragraph 3).

#### 4. CONCLUDING REMARKS

The social market economy principle is a new principle in Polish constitutionalism, determining the economic system of the Republic of Poland. Its role is primarily to point out a set of values defining a limit for the legislature's undoubtedly broad autonomy in the selection of detailed solutions to construct the economic state order.

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<sup>34</sup> P. Winczorek, *op. cit.*, p. 32–33.

<sup>35</sup> See also Judgement of CT of 30th January 2001, K 17/00.

<sup>36</sup> See also Judgement of the 21st March 2000, K 14/99.

<sup>37</sup> Judgement of 30th January 2001, K 17/00.

As a rule of constitutional interpretation, it also provides guidelines for the interpretation of further, specific provisions of Basic Law.

The specificity of the discussed principle lies in its multi-stage construction, consisting in establishing a general social market economy principle, then filling it out with the detailed contents by further constitutional principles, especially the principle of freedom of economic activities and the protection of (private) property. Rationality of the legislator, who separately underlines the more general constitutional social market economy's principle, requires that Article 20 shall be read as a whole, "rather than as an autonomous listing of the economic system's principles".<sup>38</sup> This approach to the interpretation of Article 20 is also emphasised by the CT's jurisprudence.

It should be noted that the principle of social market economy, like the principle of democratic Rule-of-Law State, do not form a principle that describes the social reality, but a desirable model of economic system to a large extent freely shaped in practice by public authorities, i.e. the government and legislature.

The fact that the juridical concept of the social market economy is not unequivocal may not — as previously mentioned — result in denying the principle, referred to in Article 20, of its normative character. From a constitutional point of view, an important issue — as emphasized by the doctrine — is what kind of meaning and content will be extracted from this principle in the judicial practice of the CT. So far, the Court referred quite sparingly to Article 20, although over the subsequent years of the application of the Constitution of 1997, it has revealed new readings of that provision, and has referred to it, while settling specific constitutional matters.

## KONSTRUKCJA I TREŚĆ KONSTYTUCYJNEJ ZASADY SPOŁECZNEJ GOSPODARKI RYNKOWEJ — WSKAZÓWKI DLA USTAWODAWCY

### Streszczenie

Zasada społecznej gospodarki rynkowej jest nową w polskim konstytucjonalizmie zasadą, determinującą ustrój gospodarczy RP. Jej rola polega przede wszystkim na wskazaniu zespołu wartości określających granicę dla niewątpliwie szerokiej swobody ustawodawcy zwykłego w zakresie wyboru szczegółowych rozwiązań konstruujących porządek gospodarczy państwa. Jako zasada konstytucyjna stanowi także wytyczną interpretacyjną do wykładni dalszych, szczegółowych przepisów ustawy zasadniczej. Specyfika omawianej zasady opiera się natomiast na jej wielostopniowej konstrukcji, polegającej na ustanowieniu ogólnej zasady społecznej gospodarki rynkowej, a następnie wypełnieniu jej treścią przez kolejne szczegółowe zasady konstytucyjne, a zwłaszcza zasadę wolności działalności gospodarczej oraz zasadę ochrony własności.

Słowa kluczowe: zasada społecznej gospodarki rynkowej, Konstytucja Rzeczypospolitej Polskiej, Trybunał Konstytucyjny, wolności prawa i obowiązki człowieka i obywatela, ustrój gospodarczy

<sup>38</sup> L. Garlicki, *The Constitution of the Republic...*, *Comments to Article 20*, p. 5.

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