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***Prosocial Regulatory Intervention in the Energy Sector.
Universalization of Public Services
On the Example of Vulnerable Consumers***

***(Prospołeczna ingerencja regulacyjna w sektorze energetyki.
Uniwersalizacja usług powszechnych na przykładzie społecznie wrażliwych
odbiorców energii elektrycznej)***

Summary

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The aim of this dissertation is to evaluate the government's prosocial regulatory intervention in relation to its level and axiological justification in the context of public services universalization, with particular consideration of vulnerable consumers. In my work, therefore, I accept the assumption that prosocial regulatory interventions in the energy sector (an example of which is the system of support for vulnerable consumers), is the result of the axiology of the energy law, which, through the scope of taking into account social elements, has distinguished itself from the axiology of Public Economic Law. As a consequence, regulatory intervention is a tool for realizing the axiology of the law of energy, thus interfering with the function of axiology. Prosocial regulatory intervention is therefore an indispensable legal instrument for the protection of certain values in the electricity sector.

The changes taking place in the energy sector (i.a. liberalization) in the last years have caused a potential (and real for many consumers) threat of impeded access to electricity. Statutory law should keep up with these changes, thus the government's role in economy (the energy sector) has changed. Consequently, the government's withdrawal from the energy sector due to public law liabilities (i.a. the issue of guaranteed access to public services), brought about the need to introduce new means of influence on the entities operating within its boundaries. This is how the new regulatory function was incorporated. Regulatory intervention in economy is not only a method (tool), but also one of the ways to achieve the aims present in the category of public interest. This puts the market under constant modification in order to achieve the goals present in its area (i.a. prosocial and procompetitive). The changes taking place in axiology and structure of the energy sector over the last years allowed to formulate crucial conclusions about the Public Economic Law's role as an important instrument to achieve both procompetitive and prosocial aims.

This work analyzes the efficiency of existing regulations, namely the government's ability to fulfill its assurances given to the consumers in the energy sector. Thus, putting the issue of service guarantee to a broader discussion about the role of the government in economy and the boundaries of permissible intervention.

Public Economic Law (incl. Energy Law) is called a law of intervention, with the help of which certain predefined public interest values are accomplished. Public Economic Law in its aim also allows to undertake all means of action (intervention/interference)

to keep the market mechanisms unconstrained for the sake of public interest defined (each time) by the lawmaker. These concerns are a starting point in formulating a thesis that with an increased social elements identification in the sector, comes an intensified government intervention. The process is carried out by imposing social responsibilities in order to force energy companies to implement the government's social directives. Practical explanation of the above mentioned problems required providing precise examples. The prosocial intervention analysis was based upon the example of the ability to lay foundations for introducing support systems for vulnerable consumers as part of common services development.

The dissertation recursively underlines the fact that axiology finds reflection in positive law and the ever changing external conditions raise a need of constant evaluation of law in the context of axiology. The government's presence in the energy sector changes over time and is influenced by a series of interdependent factors. And so, prosocial government intervention faced with new economic conditions (government's withdrawal due to the introduction of competition and open energy market) required the creation of new interaction instruments. Consequently, a new regulatory function was brought to life. The function broadened its social aspect with the progression of liberalization processes in the sector. Social regulation as part of intervention in the energy sector caused a distinction of its goals. These goals need to be evaluated by the prism of effectiveness and appropriateness of present regulations, as well as through the aid system for vulnerable consumers based upon Polish Utilities Act. The analysis of regulation acts in the dissertation shows that there are serious reasons to assume that the legal instruments introduced by the Polish legislator are inappropriate and ineffective. Moreover, the analysis of direct and indirect intervention indicates that such instruments are chosen inadequately and do not fulfill their purpose. The existing system of vulnerable consumers' protection shows no progress in the attempt to reduce the extent of the occurrence, the very goal it was supposed to achieve. Assured access to electricity at fair prices for a given group of consumers (vulnerable consumers) as part of obligations connected with common services is therefore insufficient. The analysis of current regulations proves that the created protection and support system does not, in any way whatsoever, meet the goals set up by the European

legislator. In relation to the Public Economic Law, the statutory government obligations to guarantee access to common services are thus not properly executed.

Due to the negative evaluation of the current regulations, the paper presents a new support model for vulnerable consumers and households. It is based upon the presumption that social regulation ought to be adjusted to the present market problems in the sector. Public Economic Law is nothing but a law of intervention and is bound to endure constant changes that reflect the evolution of economic reality. Therefore, incessant adaptation of the law to the variable conditions of the surrounding reality is essential. The proposed model faces the expectations behind the regulations by realizing the positive aspect, which entails the introduction of constantly improved legal solutions to confront the emerging imperfections identified in the economic boundaries. The proposed solutions in the dissertation are distinctively essential, as they concern not only consumers, but also electric utilities. The main advantage of the proposed solutions is that they create a level playing field between public obligations and benefits on the side of vulnerable consumers. Through the implementation of both Public Economic Law directive and Social Welfare Law, the new model touches upon the rule of individualization of provided aid. Even though the prosocial intervention into the sector is subject to Public Economic Law, it is still partially connected with the rules and regulations imposed by government actions defined as societal. The notion of the right to common access to electricity – introduced probably for the first time in the boundaries of Polish Public Economic Law – proves to be an important element in the new approach towards the dimension of a liberalized sector.

The practical aspect of the conducted analysis also proves that social - economic processes in the last several years and the occurrence of negative effects of liberalization, i.a. problems with energy vulnerability and energy poverty, considerably affect the identification of both common services and the social dimension of the sector. The observed phenomenon of universalization impacts not only the obligation to provide common services, but also the right to access guaranteed for the consumers by the state. The negative occurrences in the sector became the motor of change in the legal aspect. They broadened the concept of access to common services to include continued electricity supply, availability and protection of vulnerable households. The appearance and the rise of importance of common services is not only a simple answer to negative aftereffects of

liberalization, but also an effect of specific features of individual sectors, whose axiology influences the legal institutions pattern. What is more, in the case of analyzed sectors, it might seem that we are talking about “sector axiology”, which includes not only procompetitive elements, but also the need to provide certain recipients access to specific goods through the help of common services. The imposition of public responsibilities in these sectors stems from axiological duties towards consumers.

The paper is divided into three parts. The first one focuses on widely understood national and supranational axiological boundaries of the energy sector and the additional enforced narration connected with the development of the EU and national law. Apart from the issues of conceptual and methodological nature, the chapter also introduces the characteristic of the energy sector, with particular attention to consumers and household position, as well as basic meaning of energy. It also includes (in supranational view) a two-level analysis of the evolution in comprehension of the sector’s role and the changes in its axiological foundations, which results in the introduction and development of the notion of common services within a community (services of common/general economic interest). The mentioned subchapters encourage consideration of historical and axiological changes in national energy sector, ending up in a question about common sector axiology.

The second part is divided into two thematic blocks. The first one is a critical review of the acts that came into force since 2008 and legal instruments in the area of prosocial intervention, with special regard to their appropriateness, efficiency and proportion. The second one describes the analysis of legal solutions (direct and indirect intervention) in reference to the Energy Act, with particular focus on the protection of vulnerable consumers as an element of social regulation. To achieve a detailed background of prosocial intervention, the author invokes the issue of energy companies’ obligation scheme. The second chapter ends with a reflection on the social responsibility of electric utilities in reference to providing aid to vulnerable consumers.

In the last part of the dissertation, the author devises her own aid system for vulnerable consumers in the energy sector, which adheres to the rules of social regulation and complies with European requirements for common services. The system’s model was created in reference to axiological basis of intervention (sector and supra sector axiology), conclusions derived from the models functioning in other European countries, restrictions

connected with socio-economic legal environment and the specificity of the Polish sector. The model's most important elements are as follows: self-identification of beneficiaries, ex ante approach, diversification of aid instruments, constant monitoring and evaluation of the system in accordance to the effectiveness of its assumptions. Regulation, in its intrinsic definition, calls for constant improvement of already existing intervention instruments. In the author's opinion, the newly created model allows state institutions to achieve public goals without excessive interference in the economic freedom of energy companies. Thus, the intervention conforms to the set goals and does not reach beyond the necessary actions to achieve them (criterion of proportion). Therefore, the ideas proposed in the dissertation might not only improve the situation of the recipients, but also make public interference more proportional to the established goals in the sector, which makes it all the more important in reference to the accusations against the existing solutions and proves to be a major issue in the context of general rules of the Public Economic Law.

The analyses in the paper also confirm that interference should, apart from being effective, be able to allow the state to guarantee access to common services and to achieve social goals. The particularity of the energy sector seems to confirm the more and more common assumption that there is no withdrawal from constant state presence in the sector. This is the only way to guarantee consistency, continuity and universality of services passed on through the process of privatization. The dissertation underlines, in context of prosocial regulation, that the market mechanisms within the sector will probably never be able to provide the poorest consumers with access to electricity at socially accepted prices. Imperfections within the market seem to be endless and require regulatory intervention by the state. In the light of the Public Economic Law, the prosocial regulatory intervention will continue to develop, giving the state the possibility to affect the balance of interests in the energy sector and, what is most important, the ability to overcome natural anomalies in the functioning of the energy market. Therefore, the axiology behind the universalization of common services will always remain a factor that adjusts the form of the Energy Law and sets a new direction towards change in relation to providing aid to vulnerable consumers of electricity.

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