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Admissibility of *ex officio* Modification of Concession Conditions by the President of the Energy Regulatory Authority Under the Energy Law and the Legal Security of Concessionaires

[Dopuszczalność zmiany warunków koncesji z urzędu przez Prezesa URE na gruncie prawa energetycznego a bezpieczeństwo prawne koncesjonariuszy]

Abstract

This study attempts to answer whether the current national legal regulations provide the energy market regulator, the President of the Energy Regulatory Office, with a sufficient basis for permissible *ex officio* changes to the terms of the concession granted to operators. Conclusions from the linguistic and systemic interpretation of the analysed legal provisions are unequivocal. Neither does a purposive interpretation lead to opposite conclusions. The result of the interpretation shows that the analysed legal provisions do not create the right of the ERO President to make changes to the concession *ex officio*. On the one hand, they define the competence of the authority, and on the other hand, the forms of its action. However, it cannot be assumed that they also include provisions which strictly define what circumstances constitute a premise for making changes to a concession. Complementarity cannot, in fact, mean that on the basis of the provisions on jurisdiction, the power to issue a decision is granted outside these cases. A number of other arguments cited in the body of this paper also speak against equipping the ERO President with the power to amend the concession *ex officio* outside the cases directly specified in the Act.

The attempt to demonstrate the presented research theses was possible through the use of basic methodological and research instruments (using the dogmatic-legal method, the legal-comparative method, and additionally also the historical method and the analysis of case-law).

Keywords: concession, concession authority, concessionaire, energy law, President of the Energy Regulatory Authority, modification of concession.

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Introduction

In strictly defined areas of the economy that require special protection, due to the security of the state or citizens or other important public interest, the state usually carries out economic activity itself or through its *stationes fisci*, and only exceptionally allows it to be carried out also by private law entities. This is because in these sectors the proper performance of the activity is of vital importance for the economy of the whole state. These are strategic areas of the economy, i.e. areas in which the state - for reasons of important public interest - seeks to secure much greater leverage than is the case in other areas, including those that are regulated.

A concession remains a special instrument of economic activity rationing in addition to a permit and an entry in the register of regulated activity. The requirement to obtain a concession to undertake and perform a specific activity constitutes one of the basic instruments limiting economic freedom (cf. Article 22 of the Constitution of the Republic of Poland.[1]) Despite the lack of a statutory definition, the institution of a concession is usually defined in the literature and jurisprudence as an act of consent of the public authority to undertake and carry out a specific type of economic activity by a particular entrepreneur[2]; and as it was originally recognised – at the same time transferring to it a part of the state monopoly together with the granted *imperium* in this area.[3]

The detailed scope and conditions for the performance of business activities subject to licensing are determined by the provisions of separate laws regulating the procedure for undertaking and the rules for performing specific types of business activities. The provisions of these laws regulate both material and procedural issues. They are *lex specialis* in relation to general regulations concerning the institution of concessions. A special regulation in

[1] Constitution of the Republic of Poland of 2 April 1997, Dz.U. of 1997, no. 78, item 483 as amended. – hereinafter as: Constitution of the Republic of Poland.

[2] See F. Elżanowski, P. Manteuffel, *Koncesja jako prawny instrument bezpieczeństwa energetycznego*, 'Internetowy Kwartalnik Antymonopolowy i Regulacyjny' 2017, no. 6, p. 17; C. Kosikowski, Wolność gospodarcza w prawie polskim [Economic Freedom in Polish Law], Warszawa 1995, p. 254; W. Jakimowicz, Publiczne prawa podmiotowe [Public Subjective Rights], Kraków 2002, p. 309. Cf. also the judgment of the Supreme Court of 8 May 1998, III RN 34/98, OSNP 1999, no. 5, item 157.

[3] C. Kosikowski, Koncesje i zezwolenia na działalność gospodarczą, Warszawa 2002, p. 19 *et seq.*; C. Kosikowski, Koncesje w prawie polskim, Kraków 1996, p. 26; R. W. Kaszubski, M. Olszak, *Koncesja a zasada wolności gospodarczej*, 'Glosa' 1998, 7, p. 5. Differently A. Lipinski, *On the legal nature of concessions*, 'The State and the Law' 2004, 6, p. 99 *et seq*. Nowadays, the rationing introduced by virtue of the legal provisions in force is rather aimed at ensuring the protection of a specific public interest (usually precisely the security of the state or its citizens), and is not a limitation of the state's monopoly in specific areas of the economy. See, exceptionally, the activities regulated by the Act of 9 June 2011 Prawo geologiczne i górnicze, tekst jedn. Dz.U. of 2024, item 1290 as amended. – hereinafter: p.g.g. resulting from the state monopoly based on ownership of minerals.

this respect is also the Act of 10 April 1997 – Energy Law,[4] which, as a rule, in order to carry out economic activity within the scope of: production of fuels or energy, storage of electric energy, gaseous fuels and hydrogen, liquefaction of natural gas and regasification of liquefied natural gas, transmission or distribution of fuels or energy, trade in fuels or energy, transmission of carbon dioxide, it is required to obtain a licence.

In principle, the concession procedure is an application procedure, taking place on the initiative of an interested entity. The detailed elements that an application for a concession should contain and the conditions that the applicant itself should meet are usually set out in the relevant special provisions (see Articles 33 and 35 p.e.).

Research Problem

An important issue requiring analysis is whether the President of the ERO is solely responsible for the specific conditions for the performance of the activity covered by the concession, aimed at proper service of consumers, on the grounds of Article 37(1)(5) p.e. in connection with Articles 37–39 of the Business Entrepreneurs' Law,[5] regardless of whether it is implemented at the time of granting or amending the concession. Article 37(1)(5) p.e. indicates that the concession should specify the specific conditions for the performance of the activity covered by it. It therefore determines, as in the entirety of the norm decoded pursuant to Article 37(1) p.e., the content of the concession decision and not the prerequisites for its issuance or amendment. If it is not the indicated provisions that constitute the competence norm, apart from Article 23 para. 2 item 1 p.e., which would entitle the fuel and energy market regulator to authorise the determination of specific concession conditions, then there is currently no other legal basis in the Energy Law and the Business Entrepreneurs Act. Articles 32 and 33 of the Energy Act certainly do not constitute such a basis, as the first of these provisions only specify the areas of rationing adopted by the state, while the second specifies the conditions which must be met by the applicant to obtain a licence as a compact document with a specified subject and scope. *Prima facie*, therefore, the only provisions providing a basis for unilaterally and authoritatively determining specific conditions for the performance of activity should be Articles 23 and 37 of the Act on Public Law.

[4] Act of 10 April 1997 – Energy Law, unified text in Dz.U. of 2024, item 266 as amended – hereinafter: p.e.
[5] Act of 6 March 2018, Entrepreneurs' Law, vol. U. of 2024, item 236 as amended. – hereinafter: p.p.

Methodology

The attempt to demonstrate the presented research theses is made possible through the use of basic methodological and research instruments (using the dogmatic-legal method, the legal-comparative method, and, additionally, the historical method and the analysis of case-law).

Complementarity of Laws Governing the Institution of Concessions

The formation of specific conditions for the performance of licensed activities aimed at the proper service of fuel and energy consumers is the sole responsibility of the President of the ERO. This follows from the clear separation under the current Article 37 p.e. of the subject matter and scope of the activity. Undoubtedly, it remains the sole right of the entrepreneur to indicate that he wants to carry out economic activity at all and to what extent – which, in the light of Article 22 of the Constitution of the Republic of Poland, may be deprived of by the entrepreneur only in strictly defined statutory cases – and the specific conditions of carrying out the activity covered by the licence, aimed at proper service of consumers, i.e. Article 37(1)(5) of the p.e., reserved for the regulatory authority in accordance with the basic principles of rationing economic activity and the constitutional principle of equality before the law.

Thus, an important issue is whether the ERO President is entitled to adjust the content of the concession to the changed – as a result of changes in generally applicable legal regulations and the emergence of phenomena deforming the licensed market – specific conditions for the performance of the licensed activity in a situation where the application for the modification of the concession is limited to the general provisions of the concession.

The complementarity of the provisions of the Energy Law and the Entrepreneurs' Law (and the previously binding Freedom of Economic Activity Act) was not in doubt and is widely accepted in the literature.[6] As aptly emphasised in the literature, regulatory administration exercised as a fragment of executive power concerning direct interference in the rights and obligations of the entrepreneur includes three basic functions: regulatory, rationing and

[6] A. Walaszek-Pyzioł, Energia i prawo [Energy and Law], Warszawa 2002, pp. 33–36; Z. Muras, *Przesłanki odmowy udzielenia koncesji na rynku paliw i energii*, 'Przegląd Ustawodawstwa Gospodarczego' 2011, 4, pp. 2 and 3.

economic supervision, and the essential criterion differentiating the scope of this interference is the degree of state influence.[7]

The President of the ERO, as the energy market regulator, has a legal obligation to ensure the protection of this market in a systemic manner, updating concession conditions in the event that objective reasons arise. This is because the concession authority was and is entitled and obliged to ensure that the concessionaires have the same conditions for carrying out their business activity, regardless of whether they are new entities or whether they continue their existing concession activity. Of fundamental importance for the assessment of the regulator's actions is the necessity to respect, in regulatory matters, considerations of energy security, development of competition and protection of consumers and other participants of the fuel and energy market, specifying in the content of the concession such conditions which result from the provisions of the law and thus updating those conditions, ensuring the effectiveness of the regulator's actions. Such actions serve also to enable the President of the ERO to effectively fulfil the tasks entrusted to him, taking into account equal treatment of entrepreneurs conducting comparable activities, respecting the rules of proportionality.[8]

The prerequisites for the granting of an energy concession are contained in both the Energy Law and the Entrepreneurs' Law. Even on the basis of the previously applicable Law on Freedom of Economic Activity, the view of the cumulative obligation to apply both laws has become established. The provisions of the Energy Law guarantee the protection of important public and private goods and public and private subjective rights. The uniform and effective protection of important public goods and public and private subjective rights by the Energy Law requires the search for an interpretative direction that ensures equal respect for the subjects of the law and equal protection of the public and private goods guaranteed by the norms of the Energy Law.

Statutory Powers of the Regulator Regarding Licensing in Energy Trading Activities

The constitutional position of the regulator is conditioned by the strong position of traders operating, as a rule, on regulated markets – professional

[7] K. Jaroszyński, Funkcje administracji gospodarczej [Functions of Economic Administration] (in:) H. Gronkiewicz-Waltz, M. Wierzbowski (ed.), Prawo gospodarcze. Zagadnienia administracyjnoprawne [Economic Law...], Warszawa 2013, pp. 173–209.

[8] See resolution of the Supreme Court of 9 July 2019, I NSZP 1/19, judgment of the Supreme Court of 9 February 2017, III SK 65/15, judgment of the Supreme Court of 20 March 2018, III SK 14/17. See M. Jaś-Nowopolska, *Sądowa kontrola decyzji Prezesa Urzędu Regulacji Energetyki* [in:] A. Kisielewicz, J.P. Tarno (ed.), Sądowa kontrola administracji w sprawach gospodarczych, Warszawa 2013, p. 170 *et seq*.

economic players with serious human and financial resources and with a significant impact on the lives of consumers and current economic trends. The strong position of entrepreneurs must therefore be counterbalanced by an adequate position of the regulator, so that the latter is able to ensure that the public interest and consumers' rights are respected in the market. Therefore, in the opinion of the Supreme Court, the provisions defining the competences of regulatory authorities should be interpreted taking into account the constitutional principle of efficiency and reliability of the operation of public institutions.[9] The essence of the principle of efficiency and reliability of the operation of public institutions lies in the obligation to formulate and interpret the provisions of the law defining the position, composition, competences and rules of operation of a public authority in such a way that it can effectively perform all the tasks entrusted to it. The principle of efficiency and reliability in the operation of public institutions corresponds to the principle of division and balance of power, which requires the creation of separate bodies to fulfil different functions.[10]

Energy trading is a special type of professional activity, as this activity, according to Article 32(1)(4) p.e., requires a licence. The freedom of performing the indicated economic activity is limited by law, due to the existing state monopoly. In the literature and judicature, the institution of a concession is commonly defined as a public-legal entitlement granted by a decision of a competent administrative body to an individually designated entity which meets the statutorily defined requirements concerning both the subjective and objective aspects of performing a specific type of economic activity.[11] A concession gives rise not only to entitlements and certain benefits connected with them, resulting from the admissibility of the business of trading in electricity, but also imposes certain obligations on concessionaires.[12] With the possession of a concession comes the obligation to carry out this activity under the conditions set out in its content. In doing so, the concession defines not only the subject and scope of the activity, but also the specific conditions for the performance of the activity covered by the concession, aimed at providing proper service to customers (Article 37[1][5] p.e.). Only the regulatory authority has been authorised to determine these specific conditions; therefore, the possibility of influence of a party to the proceedings in this area is completely excluded. At the same time, the assumption that the President of the ERO can only determine the conditions for the performance of economic activity when granting

[9] See the resolution of the Supreme Court of 9 July 2019, I NSZP 1/19.

[10] Cf. the judgement of the full composition of the TK of 7 January 2004, K 14/03 and of 22 September 2006, U 4/06, and the judgment of the TK of 9 March 2016, K 47/15.

[11] So the judgment of the Supreme Court of 8 May 1998, III RN 34/98, OSNP 1999, no. 5, item 157.

[12] Tak A. Walaszek-Pyzioł, W. Pyzioł, Prawo energetyczne. Komentarz, ed. 2, Warszawa 1999, p. 98, and M. Czarnecka, T. Ogłódek, Prawo energetyczne. Komentarz [Energy Law. Commentary], Warszawa 2007, pp. 440 and 441.

a concession, and in the course of its performance he can no longer modify them regardless of the legal and factual changes in the market during the term of the concession (other than at the request of the concessionaire) is obviously unacceptable, due to the basic function of the concession, i.e. the protection of consumers of fuels and energy. A concession is only introduced in those areas of the economy where the state considers that, due to the need to protect certain interests, the exclusion of the freedom of economic activity is necessary for the proper functioning of the market. Taking into account the long-term validity of a concession and the admissibility of its renewal without the need to grant a new concession (Art. 39 p.e.), it would be completely illegitimate and inconsistent with the current state of the law to assume that concession conditions can only be established at the time of its initial granting. On the other hand, adopting the thesis that the concession conditions may be modified only at the request of the interested concessionaire itself would often lead to an unacceptable and even pathological situation; for it would be difficult to expect that the concessionaire itself would submit an application for modification of the conditions of the concession, which, in the opinion of such an applicant, would be unfavourable to it, despite the fact that all other entrepreneurs would already have to comply with such conditions. As a consequence, this would therefore lead to a violation of the principles of fair competition between entrepreneurs, as those who had previously obtained a concession would not have to comply with certain concession requirements, determined on the basis of subsequently applicable legal regulations. The implementation of the concession conditions is the primary obligation of the concessionaire. And a *sine qua non* condition for the rationing of economic activity by concession to fulfil its role in the field of energy is the updating of concession obligations in the event that there are objective reasons for this. Such updating is to be ensured in a systemic manner (in relation to the entire energy market), only by the President of URE as the regulator of this market. It is possible to imagine a whole spectrum of divergent interests of individual entrepreneurs operating on the energy market, making it impossible to develop uniform, standardised concession conditions and subsequently precluding their ongoing and uniform updating and adjustment to the changing external environment. This thesis is also confirmed by the current wording of Article 41 paragraph 1 and the content of the added Article 41 paragraph 1a of the Energy Law, amended by the Act of 23 July 2023 amending the Energy Law and certain other acts, which entered into force on 7 September 2023.[13] The first of these provisions – Article 41 paragraph 1 of the Energy Law, in its original wording contained the wording in fine "at the request of the energy undertaking" – which was subsequently removed through an amendment. The newly adopted provision of Article 41 paragraph 1a of the Energy Law indicates,

[13] Act of 28 July 2023 amending the Energy Law and certain other acts, Journal of Laws, item 1681.

solely by way of example, cases in which the President of the Energy Regulatory Office may change (implicitly *ex officio*) the terms of the license (thus constituting superfluity).

Pursuant to Art. 37 par. 2 of the Public Procurement Law, the granting, refusal to grant, amendment, suspension and withdrawal of a concession or the limitation of its scope in relation to the application for a concession is made by way of a decision of the minister competent as regards the subject of business activity requiring a concession, unless separate provisions provide otherwise. In turn, the detailed scope and conditions of performance of the economic activity which is subject to concession, in particular the principles and procedure for granting, modifying, suspending, revoking or limiting the scope of the concession, pursuant to Art. 37 par. 2 p.p., should be specified by separate regulations.

The Entrepreneurs' Law generally regulates the construction and the procedure of licensing itself, thus defining the general principles of this process. In turn, the scope and conditions for the performance of a specific business activity subject to licensing are determined by the provisions of separate laws. Thus, the provisions of the Entrepreneurs' Law constitute *lex generalis* (regulating the essence of the institution of concession and the basic principles of concession), while the provisions of separate laws constitute *lex specialis* (the Energy Law together with its implementing regulations, formulating the basic catalogue of prerequisites for granting or refusing to grant a concession).

The concession authority may define in the concession, within the limits of the provisions of separate acts, specific conditions for the performance of the economic activity covered by the concession. In turn, the right to determine such conditions of the concession results from Article 37(1)(5) p.e. Insofar as the provisions of the Business Act do not restrict the market regulator in the fulfilment of its obligations to ensure the security of the energy market and to update the provisions of the granted concession, this fulfilment should take place in the light of Article 41(1), (3) or (4) p.e., in the situation where the amendment is requested by the entrepreneur.

Article 41(1) p.e. constitutes one of the legal bases allowing for the modification of the granted concession, also in a situation where the entrepreneur himself requests it (despite the change in the wording of the provision). Its application does not exclude the possibility to change the concession in a situation when the regulatory body acts *ex officio*. In turn, permissible cases of changing the concession without such an application are regulated in Article 41 (3) and (4) of the Act. The formulation in the Act of a catalogue of situations in which the concession decision may be changed determines that it may take place only in these specific cases. Therefore, there is no general competence of the President of the ERO to amend the concession. Consequently, while one of these cases concerns the concessionaire's own request, the others exhaust the

category of situations in which the initiation of the procedure for amendment and the amendment itself may take place without such a request, i.e. *ex officio*. An opposing view would mean that specifying the prerequisites for changing the concession is unnecessary at all, since it is possible to change the concession without the entrepreneur's request, regardless of their fulfilment. However, the legislator has clearly specified these cases, and the establishment of a given provision cannot be regarded as unnecessary from the very beginning, as it would remain in contradiction with the rule of the legislator's rationality

It is not without significance that the norms decoded on the grounds of Art. 41 (3) and (4) p.e. refer to cases of significant failures of the licensee or circumstances affecting further conduct of the business.[14] Moreover, in accordance with Article 41 paragraph 1a of the Energy Law, the President of the Energy Regulatory Office may change the terms of the issued license, in particular if it is necessary to adapt them to the current legal status or in order to prevent practices that violate the interests of consumers or threaten the development of competition.[15] The indication of such significant events as grounds for *ex officio* modification of the concession leads to the conclusion that there is no support in the Act for the attempt to assign to the ERO President the competence of this type exercised *ex officio* on the thesis of the necessity to take into account events of particular importance from the point of view of the regulator's tasks. The legislator itself has made a kind of selection indicating in which specific cases such interference is authorised. Of course, the correctness of the determination of the scope of such cases by the legislator itself may be questionable. Moreover, the rank of factual circumstances which authorise the ERO President to change the concession *ex officio* emphasises unambiguously that such *a* change cannot take place in the event of occurrence *a contario* of minor circumstances.

The power to change the concession *ex officio* is not provided for by the regulator, in particular, the provisions contained in the Business Act. Art. 37, sec. 2 p.p. specifies the authorities competent to grant, refuse to grant, amend and revoke a concession, while it does not regulate at all the prerequisites for individual decisions. Assuming that it contains a general authorisation to amend a concession at any time is not possible, if only because this provision treats the revocation of a concession or its granting on an equal footing, and it is obvious that the concession authority may not take these actions arbitrarily, without a party's request or without the occurrence of circumstances strictly specified in specific provisions. Article 37(2) of the p.p. further stipulates that a concession is granted, modified or revoked by an administrative decision and does not refer at all to the question of the prerequisites for its issuance.

[14] See M. Żaba, P. Pinior [in:] A. Matan (ed.), Administracja w demokratycznym państwie prawa. Księga jubileuszowa Profesora Czesława Martysza, Warszawa 2022, e-LEX.

[15] See M. Domagała, Bezpieczeństwo energetyczne. Aspekty administracyjno-prawne, Lublin 2009, p. 116.

The same should be referred to Article 23(2)(1) p.e., from which it follows that the scope of action of the ERO President includes the granting and withdrawal of concessions. The provision has only a competence meaning, it does not specify the prerequisites of particular actions, nor does it give an abstract power to take them. It does not follow from this provision that the ERO President may grant or revoke a licence at any time and based on any factual circumstances. Otherwise, the remainder of the statutory regulation regarding the presented issue would therefore be redundant.

Lack of Power of the ERO President to Amend the Licence

The cited statutory provisions do not create the power of the President of the ERO to amend the concession *ex officio*. On the one hand, they define the competence of the authority, and on the other hand, the forms of its action. However, it cannot be assumed that they also include provisions strictly defining what circumstances constitute a premise for the modification of a concession. Complementarity cannot, in fact, mean that, on the basis of the provisions on jurisdiction, the authority is granted the power to issue decisions outside these cases.

Leaving aside the problem of the relation to the regulation described above, Article 155 of the Code of Administrative Procedure would also not provide a basis for the concession to be changed *ex officio* by the concession authority. This is because this regulation conditions the change of the final decision, inter alia, by the party's consent to it.

The conclusions drawn from the linguistic and systemic interpretation of the legal provisions analysed are unequivocal. Nor does a purposive interpretation lead to the opposite conclusion.

There are also a number of arguments against equipping the President of the ERO with the power to amend concessions *ex officio*, in addition to the cases directly specified in the Act. Firstly: it is the legislator who shapes the scope of tasks and powers of public authorities. Thus, the argumentation concerning the granting of a specific type of competence should be addressed to the legislator, whereas the duty of the authority is to act on the basis of already binding legal regulations. Secondly, it follows from Article 7 of the Constitution of the Republic of Poland that public authority bodies act on the basis and within the limits of the law. The scope of the authority's powers may not, therefore, be created arbitrarily and only on the basis of the conviction that this is necessary to realise its tasks and objectives, which it was established to achieve. The rational legislator determines the tasks, but also the means of their implementation, within the framework of which the authority may

or is obliged to undertake its actions. Thirdly, the granting of a concession creates a specific situation shaping the position of the entrepreneur and the conditions of his/her activity. Allowing for the possibility to change them *ex officio*, except in cases strictly specified in the act, would create a significant threat to the stability of trade and freedom of conducting business activity. It could also harm the constitutionally guaranteed freedom of economic activity (Article 22 of the Constitution of the Republic of Poland). Fourthly, reaching for a change in the concession due to a change in the law is not a necessary measure, in particular to guarantee equality of entities that have obtained and are currently obtaining concessions. It is not a prerequisite for the application to a given entrepreneur of limitations resulting from the law currently in force that these requirements be included in the concession decision. Nor can a concession exempt from generally applicable obligations and restrictions. There is no danger that an entity obtaining a concession now could find itself in a worse position than the one which obtained the concession in the past. Insofar as the legislator sees the need to adapt already issued concessions to the new regulation, it imposes appropriate obligations on concessionaires, in particular obliging them to submit an application to amend the concession within a specified period of time.

Summary

The power to shape the terms and conditions of the licensed business is provided for in the Act and is undoubtedly a measure needed to fulfil the tasks of the regulator. However, the conditions are an element of the concession decision and may be subject to change if the prerequisites for changing the decision are met. In addition to these conditions, however, the concessionaire must comply with the laws in force at the time. Thus, insofar as these provisions change, the entrepreneur must adapt his/her activity to their current wording, regardless of the content of the concession conditions. At the same time, these conditions do not constitute vested rights which could be contrasted with generally applicable laws. By the same token, the position that by amending the concession with respect to the conditions for conducting business in the face of changes in the law, the President of the ERO prevents irregularities in the activity of concessionaires is also not accurate. Currently, there are other values that cannot be overlooked and which at the same time stand in the way of extending the scope of the ERO President's powers beyond the cases specified in the Act.

It may well be the case that by the means of the power to amend a licence *ex officio*, except in cases strictly defined in the law, the authority would

achieve the important objectives set before it even better, but this cannot lead to the conclusion that it is entitled to such a power under the current state of the law.

Abstrakt

Niniejsze opracowanie stanowi próbę odpowiedzi, czy obecnie obowiązujące krajowe regulacje prawne stanowią dla regulatora rynku energetycznego – Prezesa Urzędu Regulacji Energetyki wystarczającą podstawę do dopuszczalnej zmiany z urzędu warunków udzielonej podmiotom gospodarczym koncesji. Wnioski płynące z wykładni językowej i systemowej analizowanych przepisów prawnych są jednoznaczne. Do przeciwnych konkluzji nie prowadzi również wykładnia celowościowa. Efekt wykładni wskazuje, że analizowane przepisy prawne nie kreują uprawnienia Prezesa URE do dokonywania zmian koncesji z urzędu. Z jednej strony określają one właściwość organu, a z drugiej formy jego działania. Jednak nie można przyjąć, że wśród nich są również przepisy ściśle określające, jakie okoliczności stanowią przesłankę do dokonania zmiany koncesji. Komplementarność nie może bowiem oznaczać przyznania, na podstawie przepisów o właściwości, uprawnienia do wydawania decyzji poza tymi przypadkami. Przeciwko wyposażeniu Prezesa URE w uprawnienie do zmian koncesji z urzędu poza przypadkami określonymi wprost w ustawie przemawia również szereg innych argumentów przywołanych w treści niniejszego opracowania.

Próba wykazania zaprezentowanych tez badawczych była możliwa dzięki wykorzystaniu podstawowego instrumentarium metodologiczno-badawczego (z zastosowaniem metod: dogmatycznoprawnej, prawnoporównawczej – a uzupełniająco także historycznej – oraz analizy orzecznictwa).

Słowa kluczowe: koncesja, organ koncesyjny, koncesjonariusz, prawo energetyczne, Prezes Urzędu Regulacji Energetyki, zmiana koncesji.

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