

# CONFLICT OF VALUES IN THE LICENSING PROCEDURE FOR BROADCASTING RADIO AND TELEVISION PROGRAMMES IN POLAND\*

Dr. Lidia K. Jaskuła

The John Paul II Catholic University of Lublin, Poland  
e-mail: [lidia.jaskula@kul.pl](mailto:lidia.jaskula@kul.pl); <https://orcid.org/0000-0003-3619-5826>

**Abstract.** The issue of the conflict of values in the licensing procedure for broadcasting radio and television programmes is a special case of such a clash in public economic law. The study entitled “Conflict of values in the licensing procedure for broadcasting radio and television programmes in Poland” aimed to conduct analyses to identify the values underlying licensing proceedings for broadcasting radio and television programmes in Poland, examine their potential for conflict and identify ways of resolving disputes arising in this area. The main issue of the article is formulated in the following question: “can the values determining the licensing procedure for broadcasting of radio and television programmes give rise to axiological conflicts, and if so, how should the conflicts be resolved?” The analyses conducted as part of the study led to the conclusion that the Polish broadcasting licensing procedure is determined by a number of values that may clash with one another. The entities responsible for resolving conflicts in practice and specific cases include the National Broadcasting Council and its President at the level of the administrative proceedings and the administrative courts at the level of administrative court proceedings. The settlement is based on the law, which, however, contains a number of general clauses. In order to interpret them correctly and, consequently, fairly resolve the conflict, it is crucial to refer to the fundamental source of all human rights and freedoms, including economic freedom and freedom of expression, paramount in this process – human dignity.

**Keywords:** economic freedom; freedom of expression; public administration; values; media law; media governance

## INTRODUCTION

The issue of the conflict of values in the licensing procedure for broadcasting radio and television programmes<sup>1</sup> is a special case of the conflict of

---

\* Legal status as of 30 May 2022. List of licences and decisions issued by the National Broadcasting Council: <http://www.archiwum.krrit.gov.pl/dla-nadawcow-i-operatorow/koncesje/wykaz-koncesji-i-decyzji/> [accessed: 13.10.2022].

<sup>1</sup> The licensing procedure for the transmission of radio and television programmes is conducted in three types of matters: granting a licence, extending a licence and revoking a

values in the public economic law. The subject matter formulated in that way assumes, firstly, the existence of values in that space, and secondly, a conflict of values in certain circumstances.<sup>2</sup> Jan Zimmermann reminds that “in the background of every legal institution, assuming a rational legislator, there is always a set of values” [Zimmermann 2015, 13]. The analyses performed for this study should lead to the identification of values in the space under discussion, the recognition of possible areas of their conflict, and the determination of methods of resolving the conflicts that arise in the licensing procedure for broadcasting of radio and television programmes. The starting point for the considerations is the position that puts the analysed issue into the axiological perspective, according to which “administrative law (and therefore also public economic law – the author) is to serve the good of every man, which can be considered its fundamental, in fact, the only purpose and sense of existence. Everything else – administrative structures, correlations between those structures, competence, forms of action, any type of regulating [...] serves that sole purpose” [Idem 2013, 77]. Therefore, law should serve the common good, and this criterion should be considered crucial for the adoption of a specific axiological system of law [Ruczkowski 2021, 98]. All analyses carried out for the study should be considered in the context of an axiom formulated in such a way that it cannot fail to refer to the source of human and civil freedom and rights adopted in the Constitution of the Republic of Poland, that is, human dignity.<sup>3</sup> It is both the foundation and the lens that bring together all other values, in the perspective of which those values should be identified.

The purpose of this study is to identify the values underlying the licensing procedure for broadcasting radio and television programmes in Poland, to examine their potential for conflicts and to indicate ways of resolving emerging conflicts in this respect. The main issue of the article is formulated in the following question: “can the values determining the licensing procedure for broadcasting of radio and television programmes give rise to axiological conflicts, and if so, how should the conflicts be resolved?” The solution to the aforementioned problem will make it possible to formulate specific questions: what values are to be protected in the licensing procedure for broadcasting of radio and television programmes? Is it possible for the

---

licence. A conflict of values can be observed in any of the cases.

<sup>2</sup> Models of the interdependence of values and legal norms within the legal order [Kwiecień 2010, 32-32].

<sup>3</sup> Cf. Article 30 of the Constitution of the Republic of Poland of 2 April 1997, Journal of Laws No. 78, item 483 as amended [hereinafter: the Constitution of the Republic of Poland or the CRP]: “The inherent and inalienable dignity of the person shall constitute a source of freedoms and rights of persons and citizens. It shall be inviolable. The respect and protection thereof shall be the obligation of public authorities.”

conflict of values identified in that space to occur, and if so, in what situations? How to resolve the conflict of values?

The structure of the article corresponds to the problem outlined in that way. In the first section of the study, the values to be protected in the licensing procedure for broadcasting of radio and television programmes are identified; thus the procedure is determined from an axiological perspective,<sup>4</sup> in the second section of the article, an attempt is made to indicate possible situations of conflict of values identified in that area and to propose ways of resolving possible conflicts. The main research method used in the development of the issue under study was a dogmatic method consisting in the analysis of the content of legal provisions, the analysis of case law and the position of the doctrine on the subject matter discussed in the paper.

The consequence of the volume limit that the study cannot exceed, is the analysis of selected aspects of the issue and the deliberate omission of other ones. The study does not claim the right to formulate definitive conclusions but is an invitation to discussion by presenting a specific point of view.

## 1. VALUES TO BE PROTECTED IN THE RADIO AND TELEVISION BROADCASTING LICENSING PROCEDURE

While undertaking the task of identifying the values to be protected in the licensing procedure for broadcasting of radio and television programmes, it should be remembered that “the economic order or the idea of a democratic state of law cannot be separated from the content of the law and its axiological foundations. [...] both the state, the law and a system of various other ethical conditions should be legitimised by non-legal values. In that sense, every legal norm contains a reference to values” [Zdyb 1997, 12]. Consequently, “the body applying the law cannot limit itself to the literal wording of the legal provision, and its task is to find the legal norm (law) taking into account, obviously, the provisions of the law but also the values that arise from vague terms, inter alia” [Idem 2018, 7]. In the study, the identification of values concerns several areas, which is a direct consequence of the model of licensing procedure for broadcasting of radio and television programmes adopted by the Polish legislator. The above can be achieved by indicating the axiological background of the actions of the National Broadcasting Council (the NBC – Polish: *Krajowa Rada Radiofonii i Telewizji*, KRRiT), the axiological basis of the steps taken by the party or parties to the licensing procedure and the axiological foundations of the licensing procedure. It should be remembered that during the change of the

---

<sup>4</sup> The volume of the article does not allow to include the detailed description of the values; however, they are presented in the literature on the subject.

political system in Poland, and the creation of the electronic media market, its basic element was the determination of principles for the allocation of frequencies, new forms of ownership and capital restrictions criteria. Due to those conditions, from the very beginning, the electronic media market in Poland was subjected to licensing and regulations, which is the evidence of state intervention in that area.<sup>5</sup> It should be noted that the regulating of broadcasting activities in the form of licences is an essential instrument for safeguarding the media order.

### **1.1. Axiological basis of the actions taken by the NBC in the radio and television broadcasting licensing procedure**

In the licensing procedure for broadcasting radio and television programmes, the legislator assigned a special role to the National Broadcasting Council and its President. Pursuant to the Broadcasting Act,<sup>6</sup> the authority competent for the broadcast licence is the President of the NBC, who grants the licence based on the resolution of the National Council, and the decision in this matter is final (Article 33 of the BcA). The NBC, represented in administrative proceedings by its President, is the body competent in broadcasting matters with the power to shape policy in the audiovisual market, and in licensing proceedings, the entity is authorised to make decisions within the scope of administrative discretion.<sup>7</sup> Given the above, it seems necessary to outline the status of the NBC, as a public administration body competent for broadcasting, and to identify the values underlying its operation.

The legal status of the NBC is determined by the provisions of the Polish Constitution and acts. The entity was established under the provisions of the Broadcasting Act and has the status of a constitutional body from the outset.<sup>8</sup>

Currently, the NBC has five members appointed by the Sejm (2 persons), the Senate (1 person) and the President of the Republic of Poland (1

---

<sup>5</sup> Cf. Waniek 2007, 59.

<sup>6</sup> Act of 29 December 1992, the Broadcasting Act, Journal of Laws of 2020, item 805 [hereinafter: the BcA].

<sup>7</sup> Cf. judgement of the Regional Administrative Court in Warsaw of 7 September 2010, ref. no. VI SA/Wa 2223/09, Lex no. 759707; judgement of the Regional Administrative Court in Warsaw of 30 July 2020, ref. no. VI SA/Wa 2328/19, Lex no. 3055370.

<sup>8</sup> The provision on the National Broadcasting Council was introduced to the Constitution of the Republic of Poland of 1952 by the Act of 15 October 1992 on the amendment of the Constitution of the Republic of Poland (Journal of Laws of 1993, No. 7, item 33), which entered into force on 13 February 1993. The NBC retained this rank also in the Constitution of the Republic of Poland of 1997. It was created on the entry into force of the Broadcasting Act of 29 December 1992, i.e., on 1 March 1993.

person), selected from among persons distinguished by their knowledge and experience in the field of the means of social communication (Article 7 of the BcA). The term of office for the members of the NBC is six years. The members of the NBC may not belong to a political party,<sup>9</sup> a trade union or engage in public activities incompatible with the dignity of their function (Article 214(2) of the CRP).

Pursuant to Article 213(1) of the Constitution of the Republic of Poland, the NBC “protects the freedom of expression, the right to information and the public interest in broadcasting.” By defining the tasks of the NBC, that provision determines its systemic functions – its activity is primarily to support the implementation of the three goals indicated in the provision, which are also constitutional values [Czarny 2021]. Obviously, freedom of speech in radio and television broadcasting is directly related to the fact that the Republic of Poland ensures freedom of the press and other means of social communication (Article 14 of the CRP). The constitutional regulation of the NBC is further developed in the Broadcasting Act, according to which this body “shall safeguard freedom of speech in radio and television, the independence of media service providers and video sharing platform providers, the interests of service recipients and users, and shall ensure the open and pluralistic nature of broadcasting” (Article 6 of the BcA). The Act also contains a long list of specific tasks of the NBC. Over the course of thirty years, the scope of those tasks was modified, which was mainly related to the need to adapt Polish law to the new media reality and to the requirements of the EU law but the sum those tasks guaranteed the fulfilment of the systemic functions of the NBC.

Thus, the legislator created the NBC as the guardian of certain values indicated in the Constitution and ordinary laws, and those values are: freedom of speech in broadcasting (Article 14(1) of the CRP; Article 6(1) of the BcA); the right to information in broadcasting (Article 14(1) of the CRP); the public interest in broadcasting (Article 14(1) of the CRP); the independence of media service providers and video delivery platforms in broadcasting (Article 6(1) of the BcA); the interest of service recipients and users of broadcasting (Article 6(1) of the BcA); and the open and pluralistic nature of broadcasting (Article 6(1) of the BcA).

Those values set the framework within which the NBC operates when conducting administrative proceedings on broadcasting licences.

---

<sup>9</sup> Detailed information on this subject: Jaskuła 2013, 93.

## 1.2. Axiological basis of the actions taken by a party/parties to the radio and television broadcasting licensing procedure

When analysing the situation of a party in a licensing procedure, it should be remembered, first of all, that it is in a subordinate position in relation to the administrative authority. However, inferiority of the party does not imply a lower status of the values that determine its action. The values underlying the party's actions are also systemic constitutional values, of two kinds in this case. On the one hand, the axiological basis for the activities of an entity that intends to get involved in broadcasting is freedom of speech across all aspects, on the other hand, it is freedom of economic activity. Thus, the axiological foundations of the actions taken by a party to a licensing procedure are the following values: freedom of economic activity (Article 20, 22 of the CRP);<sup>10</sup> equality of entrepreneurs (Article 32 of the CRP; Article 2 of the EA); freedom to disseminate information (Article 54 of the CRP);<sup>11</sup> freedom of expression (Article 54 of the CRP; Article 5, 4 of the PressL); freedom to obtain information (Article 54, 61 of the CRP; Article 4, 11 of the PressL); and access to public information (Article 61 of the CRP, Article 4, 11 of the PressL).<sup>12</sup>

According to the provisions of the Constitution of the Republic of Poland, “a social market economy, based on the freedom of economic activity, private ownership, and solidarity, dialogue and cooperation between social partners, shall be the basis of the economic system of the Republic of Poland” (Article 20 of the CRP). Thereby, the legislator raised freedom of economic activity to the rank of a constitutional value. While analysing that value, it should be noted that “freedom of economic activity is expressed by the possibility to undertake and carry out activities the primary purpose of which is to make a profit. An additional element is its continuity. Generally, economic activity is not a one-off action. Its framework includes the ability to make economic decisions independently, including, above all, the choice of the type (object) of activity and the selection of legal forms of its implementation” [Garlicki and Zubik 2016]. Like all forms of freedom, freedom of economic activity is not absolute and it is a subject to restrictions under general principles (Article 31(3) of the Constitution of the Republic of Poland), modified by the content of Article 22 of the Constitution [ibid.]. According to the latter provision, those restrictions “may be imposed only by means of statute and only for important public reasons” (Article 22 of the

---

<sup>10</sup> Article 2 of the Act of 06 March 2018, the Entrepreneurs Act, Journal of Laws of 2021, item 162 [hereinafter: the EA].

<sup>11</sup> Article 5 of the Act of 26 January 1984, the Press Law, Journal of Laws of 2018, item 1914 [hereinafter: the PressL].

<sup>12</sup> Article 2, 5 of the Act of 6 September 2001 on access to public information, Journal of Laws of 2020, item 2176 [hereinafter: the API].

CRP). The Constitutional Tribunal found it obvious that “economic activity, due to its nature, and especially due to its close relation to the interests of other persons and the public interest, may be subject to various restrictions to a greater extent than freedoms and rights of a personal or political nature. In particular, there is a legitimate interest of the state to create such a legal framework for economic transactions that will minimise the negative effects of free market mechanisms, if those effects are revealed in a sphere that cannot remain indifferent to the state due to the protection of commonly recognised values”<sup>13</sup> [ibid.]. The obligation to obtain a licence to perform the economic activity of broadcasting radio and television programmes is a specific example of restricting both freedom of economic activity and freedom of expression, and it is restricting in accordance with the rules of law.

The value constituting one of the axiological bases for actions taken by a party to a licensing procedure directly related to freedom of economic activity is the equality of entrepreneurs. According to current legislation, “Taking up, performance and termination of a business activity is available to everyone on an equal terms” (Article 2 of the EA). Legal equality of entrepreneurs is based on the constitutional principle of equality before the law.<sup>14</sup> The justification of the draft Act – Entrepreneurs’ Law, indicates that the principle of equality of entrepreneurs before the law, meaning that in the sphere of starting, performing and terminating economic activity, entrepreneurs, to the extent that they are characterised by a given essential (relevant) feature to the same degree, should be treated equally, i.e. according to the same measure and with no differentiation, whether favourable or discriminatory [Kruszewski 2019].

With regard to the analysed dimension of the issue under study, other values are: freedom to disseminate information, freedom of expression, freedom of obtaining information and access to public information. They represent different aspects of freedom of speech (Article 14, 54 of the CRP; Article 6(1) of the BcA), and preventing the implementation of any of them makes it impossible to fully realise freedom of speech. That constitutional value is implemented by ensuring the realisation of its components. In line with the constitutional provision, “freedom to express opinions, and to acquire and disseminate information shall be ensured to everyone and preventive censorship of the means of social communication and the licensing of the press shall be prohibited. The act may introduce an obligation to obtain

---

<sup>13</sup> Judgment of the Polish Constitutional Tribunal of 8 April 1998, ref. no. K 10/97, Lex no. 32602; judgment of the Polish Constitutional Tribunal of 11 March 2015, ref. no. P 4/14, Lex no. 1652943.

<sup>14</sup> Cf. Article 32 of the CRP: “(1) All persons shall be equal before the law. All persons shall have the right to equal treatment by public authorities. (2) No one shall be discriminated against in political, social or economic life for any reason whatsoever.”

a licence to operate a radio or television station prior to engaging in that activity” (Article 54 of the CRP). At this point, attention should be paid to the determination of the licensing framework permitted by the Constitution of the Republic of Poland under freedom of speech. On that ground, the licensing of broadcasting is permitted, however the licensing of the press is forbidden. This *passus* makes it necessary to point out that under the law in force in Poland, the term *press* in the constitutional approach is a narrower category than the term *press* within the meaning of the Press Law Act. In constitutional terms, that concept does not include radio and television press releases.<sup>15</sup> Finally, the content of the provision of that article must be analysed in close connection with the content of the provision, according to which “the Republic of Poland shall ensure freedom of the press and other means of social communication” (Article 14 of the CRP).

Therefore, a party to the licensing procedure applying for a licence to broadcast radio or television programmes seeks to create for itself legal conditions for the realisation of the above-mentioned values.

### **1.3. Axiological basis determining the licensing procedure for broadcasting radio and television programmes**

The licensing procedure itself is also determined by values. Decoded as part of the analysis of legal provisions, they can be divided into two types: substantive values and formal values. The former ones relate to the substantive aspects of the subject matter of the procedure, the latter ones to its formal aspects.

The substantive values protected in the licensing procedure are: the interests of the national culture (Article 36(2.1) of the BcA); good manners and upbringing (Article 36(2.1) of the BcA); the security and defence of the state (Article 36(2.1) of the BcA); the security of classified information (Article 36(2.1) of the BcA); the compliance with broadcasting and mass media regulations by entrepreneurs (Article 36(1.5) of the BcA); and the compliance of programme activities with the statutory requirements for the tasks resulting from the Broadcasting Act (Article 36(1.1) of the BcA). The formal values that determine the licensing procedure are: the transparency of the licensing procedure (Article 34 of the BcA); the competitiveness on the media market (Article 36(2.2) of the BcA); the subjective relation to the Republic of Poland (Article 35(1) of the BcA); the financial stability in terms of the necessary investments and programmes (Article 36(1.2) of the BcA); the inclusion of programmes produced by the broadcaster (Article 36(1.3) of the BcA); the inclusion of programmes originally produced in the Polish

---

<sup>15</sup> Cf. also: Tuleja 2021.



language and in the language of a national, ethnic or regional minority, and the inclusion of European programmes (Article 36(1.4) of the BcA). It should be recalled that the general principles of administrative procedure and the values they protect also apply in the licensing procedure.<sup>16</sup>

In the licensing procedure, the authority that grants the licence assesses, *inter alia*, to what extent the applicant for the licence guarantees the implementation of the aforementioned values. If the assessment of the guarantee leads to the conclusion that the dissemination of programmes by the applicant could jeopardise the interests of the national culture, good manners and upbringing, the security and defence of the state and the security of classified information, or the applicant could achieve a dominant position in the field of mass media in a given licence area, the licence is not granted (Article 36(2) of the BcA). Therefore, the likelihood of a threat to one of the above-mentioned values is, by law, a condition for the obligatory refusal to grant the licence.

## 2. TYPES OF VALUE CONFLICTS AND WAYS OF RESOLVING THEM IN THE RADIO AND TELEVISION BROADCASTING LICENSING PROCEDURE

Based on the analyses presented above, the licensing procedure for broadcasting of radio and television programmes is determined by a number of values in three distinguished areas. The multiplicity of values and the fact that various entities refer to them during the procedure may lead to a conflict of interests of those entities and, as a result, also to a conflict of values. More precisely, the source of the conflict may be a failure to respect the values referred to by a party in its statement about a violation of an indicated rule of law. This is so even though they are all based on one supreme value, which is human dignity. This value should constitute a reference point while resolving possible conflicts. Thus, in seeking an answer to the second question (is it possible for the conflict of values identified in that space to occur, and if so, in what situations?) it should be stated that, generally, the occurrence of a collision of values is possible in two forms. Firstly, between the party to the procedure (here, there may be one or more entities) and the administrative body (the NBC and the President of the NBC), secondly, between the parties to the procedure (if there is more than one entity in

---

<sup>16</sup> Among them, there are principles of: the rule of law, objective truth, taking into account the public interest and the legitimate interest of citizens, trust in public authority, provision information to parties, active participation of a party in the procedure, persuasion, speed and simplicity of the procedure, amicable settlement of disputes, written nature of the procedure, permanence of administrative decisions, judicial review of final decisions. On the essence of legal principles cf. Kordela 2006, 39-54.

the procedure and the number of licences to be granted is smaller than the number of the applications). Obviously, both types of conflict may involve the values determining the axiological basis of actions taken by the entities in the licensing procedure, i.e. the party or parties and the administrative body, as well as the values determining the licensing procedure itself. A conflict arises when the subjects of the procedure refer to values which cannot be realised at the same time as the values remain in a competitive relationship; therefore, their simultaneous implementation is impossible.

Having established that a conflict of values may arise, it is necessary to answer the question of how to resolve that conflict. It is worth remembering that the recognition of the axiological minimum and fundamental rights as a common and universal element of the legal order in states of constitutional democracy does not resolve *per se* many of the fundamental ethical and legal conflicts faced by contemporary legal systems [Safjan 2008, 14]. In a democratic state based on the rule of law, the manner in which conflicts are resolved is determined by the law in force interpreted by entities appointed to do so and applied to a specific situation, which leads to the creation of the practice of jurisprudence. A reference to the above is found in the thesis: “law plays a very important role in resolving conflicts of interest, which are always a conflict of values for the parties to the dispute” [Kość 1998, 115]. The entities that resolve the conflicts being the subject matter of this study are, respectively: at the stage of administrative proceedings – the NBC, adopting a resolution on the matter, and its President, issuing an administrative decision based on the resolution; at the stage of administrative court proceedings – administrative courts, exercising control over the legality of administrative action. Objections are raised by the parties to the procedure when the issued administrative decision is not in accordance with the party’s request, in particular, in the event of a refusal. The administrative body issues a decision within the administrative discretion under the law,<sup>17</sup> which further reinforces the imperative to raise objections.

An example of a conflict that arose between the NBC and a party to the procedure as a result of a refusal to grant the licence may be a case when a conflict of values was resolved by the Supreme Administrative Court (the SAC, Polish: *Naczelny Sąd Administracyjny*, NSA) in a different way than

---

<sup>17</sup> “[...] the decision in this respect [granting the licence – author] is of an administrative discretion” – judgement of the Regional Administrative Court in Warsaw of 19 May 2009, ref. no. VI SA/Wa 2253/08, Lex no. 1062162; judgement of the Regional Administrative Court in Warsaw of 4 April 2016, ref. no. VI SA/Wa 2225/15, Lex no. 2259673; judgement of the Regional Administrative Court in Warsaw of 18 January 2017, ref. no. VI SA/Wa 1816/16, Lex no. 2776544; judgement of the Regional Administrative Court in Warsaw of 3 December 2019, ref. no. VI SA/Wa 1818/18, Lex no. 3021793.

by the NBC.<sup>18</sup> In the above-mentioned case, the NBC refused to grant the licence to a party that was the only applicant. It was clear from the justification that the reason for the refusal was a change of the nature of the programme broadcast so far – following the assessment of the party's application, the authority concluded that the nature of the programme was changed from a universal programme with a high share of spoken parts (educational, informative, journalistic and dedicated to local topics) to a specialised one – music programme. The party complained that the President of the NBC failed to explain why the programme assumptions proposed by the applicant were unacceptable, did not sufficiently examine the facts and used non-statutory and general wording in the justification of the decision. Thus, the party alleged violation of Article 7, 8 and 9 of the Code of Administrative Procedure.<sup>19</sup> However, the main substantive objection was the claim that the NBC, in its decision in a form of a resolution, and the President, in the administrative decision, imposed on the party a certain profile of the programme broadcast on the radio station, which meant that the authorities exceeded their statutory powers, were arbitrary, and thus, violated the principle of freedom of economic activity. Therefore, in the discussed case, there was a conflict of values – the NBC, guarding the public interest in radio and television broadcasting defined it incorrectly, the party, in its refusal decision, claimed that the authority had violated the value of economic freedom and the values protected by the principles of general administrative procedure, in particular, material truth, trust in the administrative authority or the provision of information to a party. When settling the case, the SAC stated that “the provision of Article 36(2) of the Broadcasting Act sets out exhaustively the prerequisites for not granting the licence to broadcast radio and television programmes, namely: threat to the interests of the national culture, good manners and upbringing, state security and defence, violation of national confidentiality or achieving a dominant position by the applicant in the field of mass media in a given area. Other grounds for a refusal to grant the licence are not provided for in the Act; obviously, this does not involve – the SAC added – the situation of applying for one licence by several entities when the granting of the licence to one applicant results in the refusal to grant it to the others.”<sup>20</sup> In that particular case, in the opinion of the author, freedom of speech was also violated.

---

<sup>18</sup> Judgment of the Supreme Administrative Court in Warsaw of 25 November 2003, ref. no. II SA 2764/02, Lex no. 1694579.

<sup>19</sup> Act of 14 June 1960, the Code of Administrative Procedure, Journal of Laws of 2021, item 735.

<sup>20</sup> Judgment of the Supreme Administrative Court in Warsaw of 25 November 2003, ref. no. II SA 2764/02, Lex no. 1694579.

An example of a conflict between the parties to the procedure is a case for the extension of a licence, when an administrative body refused to give the licence to one entity – Radio Alex from Zakopane, and granted it to the other one – a diocesan radio from Nowy Sącz. The party that did not obtain the licence appealed against the administrative decision of the President of the NBC. The judgments dismissing the complaint were issued in the proceedings before the Regional Administrative Court in Warsaw<sup>21</sup> and the Supreme Administrative Court.<sup>22</sup> In its complaint, the complainant alleged violation of a number of substantive and procedural provisions, both by the authority and by the party that obtained the licence. The complainant alleged, apart from the infringement of procedural provisions of Article 6, 7, 10 and 12(1) of the Code of Administrative Procedure, the violation of Article 36(1)(5) of the BcA, i.e., the improper assessment by the President of the NBC of the premise of “compliance with the provisions on radio communications and the mass media so far” by the entity that obtained the licence, claiming that that entity had been broadcasting radio programmes illegally for some time. Thus, the main accusation of the substantive argumentation was directed against the competitor. Two entities intended to implement the value of freedom of economic activity. The administrative authority, while protecting the public interest in broadcasting, was obliged to decide which of the two parties it would enable to realise that value. The allegations of the complainant were not taken into account at any stage of the proceedings. The President of the NBC has shown that the body did not violate the law when granting the licence. “The authority that granted the licence emphasised that while examining the submitted applications, it followed the rule of law, objective truth and deepening of trust. When issuing the decision, the entity was also guided by the principle of equality before the law. Also, in the course of the procedure, the submitted applications were assessed in accordance with the criteria set out in Article 36(1) of the Broadcasting Act, that is, the degree of compliance of the intended activity with the tasks specified in Article 1(1) of the Broadcasting Act, taking into account the degree of implementation of those tasks by other broadcasters operating in the area covered by the licence, the applicant’s ability to make the necessary investments and finance the programme, the expected inclusion of programmes produced by the broadcaster or on the party’s request or in cooperation with other broadcasters, the expected inclusion of programmes referred to in Article 15(2) of the Broadcasting Act, as well as the compliance with regulations on radio communication and other means of social communication

---

<sup>21</sup> Judgement of the Regional Administrative Court in Warsaw of 18 January 2017, ref. no. VI SA/Wa 1816/16, Lex no. 2776544.

<sup>22</sup> Judgment of the Supreme Administrative Court of 3 April 2019, ref. no. II GSK 3024/17, Lex no. 2673704.

so far.”<sup>23</sup> In the body’s argumentation, the President of the NBC referred to a number of values underlying the regulations. The Regional Administrative Court in Warsaw noted that “Taking into account the criteria for assessing both applications, described in detail by the authority, the court came to the conclusion that the authority that granted the licence had proved in its decision why the proposal of the diocesan radio [...] was more credible and socially justified and, consequently, why the programme [...] would, to a greater extent, meet the conditions specified in the announcement of the President of the NBC of 1 August 2013, both in terms of the nature of the programme and the inclusion of programmes implementing that nature.”<sup>24</sup> Importantly, the court also emphasised that the authority granting the licence, while analysing the two applications, was guided by the rule of law and subjected those applications to an appropriate assessment based on legal provisions.<sup>25</sup> With regard to the case under discussion, two elements of the court’s decision are of particular importance: defining the public interest and the resolution of the allegations of infringement of the law by the competing party. In this respect, the court shared the position of the President of the NBC. The body explained that in the case at hand, the public interest was defined as the interest of listeners who were to have access to an attractive offer implemented by an entity that was to broadcast a radio programme of a socio-religious nature, and emphasised that it followed from juridical doctrine and judicature that administrative authorities were entitled to their own assessment of public interest and the legitimacy of the citizen’s interest. In that dimension, the authority, taking into account the interests of the audience and ensuring the open and pluralistic nature of broadcasting, is empowered by law to shape policy in the audiovisual market. With regard to the allegation of non-compliance of the entity that granted the licence with the regulations on radio and mass media, the authority stressed that, while making its assessment in this regard, the NBC should rely on decisions that had been issued in similar cases. In that context, commenting on Article 36 of the Broadcasting Act, Jacek Sobczak adds that the wording “past compliance with broadcasting regulations” lacks accuracy and precision, and the fact that although the Act does not set time limits for the assessment of past compliance with broadcasting and mass media regulations, it seems unquestionable that acts in respect of which the statute of limitations for prosecution has expired or the conviction has been erased cannot be subject

---

<sup>23</sup> Judgement of the Regional Administrative Court in Warsaw of 18 January 2017, ref. no. VI SA/Wa 1816/16, Lex no. 2776544.

<sup>24</sup> Judgement of the Regional Administrative Court in Warsaw of 18 January 2017, ref. no. VI SA/Wa 1816/16, Lex no. 2776544.

<sup>25</sup> Judgement of the Regional Administrative Court in Warsaw of 18 January 2017, ref. no. VI SA/Wa 1816/16, Lex no. 2776544.

to negative assessment [Sobczak 2001]. In this case, the authority and the courts resolved the conflict of interests of two entities competing for one licence. The real subject of that dispute was a number of values: freedom of economic activity, equality of entrepreneurs, public interest in radio and television broadcasting, the interest of service recipients, following the regulations by the entrepreneur and the transparency of the licensing procedure. The entities issuing the decision in the case under discussion were obliged to take all of the above-mentioned values into account, refer to the situation in question, weigh competing values and justify which one should be given the priority.<sup>26</sup>

In a similar case, resolved by the judgment of the Regional Administrative Court in Warsaw,<sup>27</sup> the complainant accused the administrative authority of unequal treatment in the licensing procedure. The President of the NBC explained that in the case under analysis, the concept of public interest was defined as the interest of listeners having access to an attractive offer implemented by a local entity that would distribute a universal radio programme addressing local issues. In the opinion of the authority, the entity that was granted the licence met the required conditions to the highest degree. As part of the issued decisions, the administrative body shaped the media policy in a given area. The authority demonstrated that the two entities covered national news in a sufficient way and that there were two radio stations responding to the religious needs of the residents in that area. Taking those circumstances into account, the authority stated that there was a lack of a non-religious programme with a local focus in that market. Programmes of an educational or advisory nature, while valuable, were not the most promoted ones within the framework of the competition under consideration, unless they were local. The essence of the procedure in question was to introduce the most attractive programme addressing the issues of interest to the local community. The entity that obtained the licence declared to increase the number of local programmes while the complainant did not. The complainant accused the authority of unequal treatment and of exceeding its administrative discretion. The court dismissed the complaint, stating that the authority had not exceeded the limits of administrative discretion set by the legislator. Sharing the position of the administrative authority, the Regional Administrative Court outlined the principles of judicial review of “administrative discretion.” The court stated that, although it was not explicitly articulated in the contested decision, it could be concluded that the proactive approach of the company that was granted the licence was approved by the authority. The commitment of the company and its declaration to increase the number of local programs

---

<sup>26</sup> On weighing values: Potrzyszcz 2015, 107-22; Bogucki 2020, 97.

<sup>27</sup> Judgement of the Regional Administrative Court in Warsaw of 9 November 2020, ref. no. VI SA/Wa 734/20, Lex no. 3152248.

resulted in a positive decision of the administrative body. In the opinion of the court, this does not constitute an abuse of administrative discretion. The court emphasised that, as regards decisions of a discretionary nature, the very reasoning of the authority which led to the conclusion forming the basis of the contested decision was subject to review. A key element that the court took into account when reviewing the implementation of administrative discretion by the authority was the “motivation underlying the decision.”<sup>28</sup> “In the court’s opinion, its examination makes it possible to determine whether the act issued does not bear the characteristics of arbitrariness. A decision that has a coherent and logical justification must be considered lawful in this situation.”<sup>29</sup> The quoted reasoning of the Regional Administrative Court corresponds to the valid thesis expressed years ago by the SAC: “The exhaustive presentation of the reasons for the decision, including the criteria which guided the body in assessing the facts on which it based its decision, is of particular importance in cases where there are several entities-parties competing for a particular good that is the subject of administrative regulating. The authority’s decision is then reduced to the identification (selection) of one of the entities – the one which, compared to the others, fulfils the criteria for the award of a particular good to the greatest extent. The judicial assessment of the correctness of this selection shall, therefore, be an evaluation of the validity of comparison and the conclusions drawn from this process by the authority resolving the case.”<sup>30</sup>

In the cited examples, it was the will of each entity to implement a number of values when applying for a licence. They could not be met in every case, which resulted from their misreading or a limited amount of licenced goods. In each case, it led to conflicts resolved within the administrative discretion of the administrative authority and controlled by the administrative courts.

## CONCLUSIONS

The conflict of values in public economic law is a topic closely related to the axiology of this area of law. “Anyone who creates and applies the law must be guided by values. [...] One cannot create and apply legal standards without referring to the values that give direction and motivate human action” [Kość 1998, 113-14]. The abundance of values, characterised

---

<sup>28</sup> Judgement of the Regional Administrative Court in Warsaw of 9 November 2020, ref. no. VI SA/Wa 734/20, Lex no. 3152248.

<sup>29</sup> Judgement of the Regional Administrative Court in Warsaw of 9 November 2020, ref. no. VI SA/Wa 734/20, Lex no. 3152248.

<sup>30</sup> Judgment of the Supreme Administrative Court in Warsaw of 25 November 2003, ref. no. II SA 1794/02, Lex no. 169458.

as plurality, implemented by a large group of entities is bound to raise the question of the potential for the emergence of conflicts in this broad area. The conflict of values in the licensing procedure for broadcasting radio and television programmes is a special case of such a clash in public economic law. The purpose of this study was to identify values underlying the licensing procedure for broadcasting radio and television programmes in Poland, examine their potential for conflicts and indicate methods of their resolution.

The main issue of the article was formulated in the following question: “can the values determining the licensing procedure for broadcasting radio and television programmes give rise to axiological conflicts, and if so, how should the conflicts be resolved?”

When attempting to answer this question, it is important to note that similarly to the entire public economic law, the plurality of values appears also in the licensing procedure for broadcasting radio and television programmes. The study identified a number of values in three main areas of the analysed issue: values determining the framework of actions undertaken by the NBC in the licensing procedure for broadcasting radio and television programmes, values determining the framework of actions undertaken by a party or parties to this procedure and values determining the licensing procedure. The conducted analyses have led to the conclusion that such a situation may give rise to a conflict of values – their multiplicity and the fact that they are invoked by different entities in the course of proceedings may lead to a conflict of interests between these entities and, consequently, to a conflict of values. In such a situation, it is necessary to resolve these disputes, which can essentially occur in two forms – a party to the proceedings vs. an administrative authority or a party vs. a party. The legislator has decided that such a resolution shall be conducted by the administrative authority, which does so within the framework of administrative discretion by weighing competing values and deciding to give preference to one of them, and the administrative courts as part of their review of the legality of actions undertaken by public administration bodies. It also raises a question as to whether the administrative authority is equipped with a point of reference when carrying out this duty. The answer is “yes”. This point of reference is the inherent, inalienable and inviolable dignity of the human being, which constitutes the source of all their freedoms and rights, and which the public authorities are obliged to respect and protect.

#### REFERENCES

- Bogucki, Olgierd. 2020. “Rola wartości w interpretacji prawa. Ujęcie normatywne.” *Archiwum Filozofii Prawa i Filozofii Społecznej* 23, no. 2:96-108. Doi: 10.36280/AFPiFS.2020.2.96



- Czarny, Piotr. 2021. "Komentarz do art. 213." In *Konstytucja Rzeczypospolitej Polskiej. Komentarz*, edited by Piotr Tuleja. 2nd edition. Warszawa: Wolters Kluwer Polska. LEX el.
- Garlicki, Leszek, and Marek Zubik. 2016. "Komentarz do art. 22." In *Konstytucja Rzeczypospolitej Polskiej. Komentarz*, edited by Leszek Garlicki, and Marek Zubik. Vol. 2. 2nd edition. Warszawa: Wydawnictwo Sejmowe. Lex el.
- Jaskuła, Lidia K. 2013. "Krajowa Rada Radiofonii i Telewizji a postulat apolityczności administracji publicznej – pułapka, wyzwanie czy szansa? (Uwagi wybrane)." In *Media-czwarta władza?*, vol. 3, edited by Jacek Sobczak, and Witold Machura, 85-101. Opole: Wydawnictwo Naukowe Scriptorium.
- Kordela, Marzena. 2006. "Zasady prawa jako normatywna postać wartości." *Ruch Prawniczy, Ekonomiczny i Socjologiczny* 68, no. 1:39- 54.
- Kość, Antoni. 1998. "Relacja prawa i wartości w społeczeństwie otwartym." *Roczniki Nauk Prawnych* 8:107-16.
- Kruszewski, Artur K. 2019. "Komentarz do art. 2." In *Prawo przedsiębiorców. Komentarz*, edited by Aldona Pietrzak. Warszawa: Wolters Kluwer Polska. Lex el.
- Kwiecień, Roman. 2010. "Wartości i prawo a kreatywność porządku prawnego." *Forum Prawnicze* 1:30-43.
- Potrzeszcz, Jadwiga. 2015. "Ważenie wartości w prawie a problem ich absolutności i relatywności." *Principia. Pisma koncepcyjne z filozofii i socjologii teoretycznej* 61-62:107-22.
- Ruczkowski, Piotr. 2021. "Aksjologia Konstytucji RP, czyli od wartości do prawa pozytywnego." *Dialogi Polityczne* 30:97-114.
- Safjan, Marek. 2008. "Prawo, wartości i demokracja." *Chrześcijaństwo-Swiat-Polityka* 5, no. 1:5-23.
- Sobczak, Jacek. 2001. *Radiofonia i telewizja. Komentarz*. Kraków: Zakamycze. Lex el.
- Tuleja, Piotr. 2021. "Komentarz do art. 14." In *Konstytucja Rzeczypospolitej Polskiej. Komentarz*, edited by Piotr Tuleja. 2nd edition. Warszawa: Wolters Kluwer Polska. Lex el.
- Waniek, Danuta. 2007. *Dylematy ładu medialnego RP. Standardy europejskie a praktyka polityczna*. Kraków: Krakowskie Towarzystwo Edukacyjne sp. z o.o. – Oficyna Wydawnicza AFM.
- Zdyb, Marian. 1997. *Publiczne prawo gospodarcze*. Kraków–Lublin: Zakamycze.
- Zdyb, Marian. 2018. "Podstawowe zasady (standardy) ładu gospodarczego w świetle ustawy z 6.3.2018 r. – Prawo przedsiębiorców." In *Ustawa z 6.3.2018 r. – Prawo przedsiębiorców – analiza i ocena najważniejszych przepisów. (Dodatek specjalny do Monitora Prawniczego 13/2018)*, edited by Małgorzata Sieradzka, 5-13. Warszawa: C.H. Beck. Legalis el.
- Zimmermann, Jan. 2013. *Aksjomaty prawa administracyjnego*. Warszawa: Wolters Kluwer Polska.
- Zimmermann, Jan. 2015. "Wprowadzenie." In *Wartości w prawie administracyjnym*, edited by Jan Zimmermann, 11-16. Warszawa: Wolters Kluwer Polska.