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**ADMINISTRATIVE-LEGAL REGULATION OF ECONOMIC
ACTIVITY OF PRIVATE INDUSTRY, TRADE AND SERVICES IN
PEOPLE'S POLAND (1944-1989)**

People's Poland was not governed by the principle of economic freedom contained in the contemporary Polish constitution. After the communist takeover, large and medium-sized private enterprises were nationalized. Only small manufacturing, trade and service companies were allowed to operate. The private sector was supposed to play only a complementary role to the dominant state-owned enterprises. The establishment and running of such businesses was strictly regulated. There were also handicrafts operating according to traditional principles, which is not the subject of this study. In the 1940s, the authorities declared support for the private sector, but in practice hindered it in various ways. A requirement to obtain a business license was introduced. During the political thaw of the 1950s, the policy of crippling the private sector was criticized, but new laws passed during this period maintained strict regulation. The new regulations introduced in the 1970s did not bring a dramatic change. Improvements in the situation of private entrepreneurs were heralded by reforms in the 1980s, but they failed to save the communist system

from collapse. «The Wilczek Law» of 1988 ended regulation and introduced the principle of economic freedom.

***Key words:** socialism, People's Poland, private sector enterprises, centrally planned economy.*

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**АДМІНІСТРАТИВНО-ПРАВОВЕ РЕГУЛЮВАННЯ
ГОСПОДАРСЬКОЇ ДІЯЛЬНОСТІ ПРИВАТНОЇ ПРОМИСЛОВОСТІ,
ТОРГІВЛІ ТА СФЕРИ ПОСЛУГ У ПОЛЬСЬКІЙ НАРОДНІЙ
РЕСПУБЛІЦІ (1944-1989)**

Народна Польща не керувалася принципом економічної свободи, що міститься в сучасній польській Конституції. Після приходу до влади комуністів великі та середні приватні підприємства було націоналізовано. Було дозволено працювати лише невеликим виробничим, торговим та сервісним компаніям. Приватний сектор мав відігравати лише допоміжну роль відносно панівних державних підприємств. Заснування та ведення такого бізнесу було суворо регламентовано. Існували також крафтові промисли, які працювали за традиційними принципами, що не є предметом цього дослідження. У 1940-х роках влада декларувала підтримку приватного сектору, але на практиці всіляко перешкоджала йому. Було запроваджено вимогу отримання ліцензії на ведення бізнесу. Під час політичної відлиги 1950-х років політику утисків приватного сектору було піддано критиці, але нові закони, ухвалені в цей період, зберегли суворе

регулювання. Нові правила, запроваджені в 1970-х роках, не принесли кардинальних змін. Поліпшення становища приватних підприємців було проголошено реформами 1980-х років, але вони не змогли врятувати комуністичну систему від краху. «Закон Вільчека» 1988 року поклав край регулюванню і запровадив принцип економічної свободи.

***Ключові слова:** соціалізм, Народна Польща, приватні підприємства, централізована планова економіка.*

Description of the problem. In contemporary democratic countries, where the economic system is based on free market economics, the principle of economic freedom prevails. People's Poland was governed by communism and a centrally planned economy. However, the existence of private enterprises was allowed to some small extent. Legal regulation of their operation had to be based on a principle other than economic freedom. It is expedient to reconstruct and analyze this principle.

Analysis of recent research and publications. The issue of the history of Polish public economic law under communism is not a popular research topic today. When conducting studies, it is necessary to go back to sources from earlier decades. Related topics are currently covered by economic historians such as Janusz Kalinski [16, 22] and Dariusz Grala [44].

Purpose of the study. The purpose of the study, the results of which are presented in this paper, was to reconstruct the model of regulating the activities of private industry, trade and services in People's Poland and how it evolved with the political changes taking place during different periods of that country's history.

Essential content of the study. In contemporary Poland, the principle of economic freedom became a fundamental systemic principle almost immediately after the political transition to democracy and a free market economy began in 1989. As early as December of that year, Article 6 of the

1952 Constitution [1], inherited from the communist era, was introduced in its new wording [2], stating that the Republic of Poland guarantees freedom of economic activity regardless of the form of ownership, and that this freedom may be restricted only by statute. Whereas the current Constitution, passed in 1997 [3], contains Article 20, which states that a social market economy based on freedom of economic activity, private property and solidarity, dialogue and cooperation between social partners is the basis of the economic system of the Republic of Poland. Cezary Kulesza writes that: «*Economic freedom is a so-called public subjective right of a «negative» nature manifested in the sphere of economic activity as the principle that everything that is not prohibited is permitted*» [4, p. 152]. He points out that this understanding of the principle of economic freedom comes out from the case law of the Supreme Court, and the importance of this principle has also been repeatedly emphasized by the Constitutional Tribunal, which concluded, inter alia, that its restrictions cannot be arbitrary, they should have rational reasons at their core, be substantively justified enough so that in conflict with the principle of «free economic activity» the axiological calculus prevails in favor of the restriction [4, p. 153].

In People's Poland, the Polish state ruled by the Communists from 1944 to 1989, things were quite different. As late as 1988, in the declining period of that system, Michał Waligórski wrote: «*the system of a planned economy requires that the bodies of state administration have the means to shape relations in the non-socialized sector in accordance with the requirements of a socialist planned economy. Thus, handicrafts, private trade and services were subjected to the regulation activities of the state administration*» [5, p. 81]. Therefore, it is worth investigating how exactly legal provisions for the private sector looked like and evolved in a legal and economic system based on completely different principles than modern Poland. Meanwhile, for readers more familiar with the legal history of other countries on the eastern side of the Iron Curtain, it may be interesting,

and even surprising, that in People's Poland the private sector existed at all, even despite detailed regulations and severe restrictions.

However, the title of this paper promises an analysis of regulations that do not apply to «economic activity» in the private sector, but specifically to private industry, trade and services. This is because these are not all the entities that could operate in the private sector during the period under study. Maria Gonetova, in one of the few studies on the legal regulation of the private sector in People's Poland dating from 1988, wrote: *«the economy at the time included two groups of entities: handicrafts and private industry, trade and services. The first of these groups is characterized by a number of common features: handicraft techniques of production and services, the apprentice training system inherent in handicrafts, the traditional organizational and self-governing system. The second group, on the other hand, is a conglomerate of different economic activities, whose common feature is that the enterprises performing them are privately owned»* [6, p. 32-33]. This paper analyzes the regulations for the operation of private industry, trade and services in People's Poland. The history and evolution of regulations on handicraft is a vast subject requiring a separate study in the future.

The starting point for the changes that the Communists introduced in Poland after seizing power was the legal system of the interwar period. There the most important act regulating the rules of economic activity was the Ordinance of the President of the Republic on Industrial Law [7] of 1927. According to its Article 3, the conduct of industry (at that time the term was used not only for production, but also for trade and services) was free and permitted to everyone, unless the ordinance provided otherwise. Karolina Zapolska points out that there were quite a few of these restrictions, and they fell into several categories: subjective (the need to have documented qualifications), regulatory (the need to obtain a license – found in the case of 13 types of economic activity) and policing (the need to comply with tax, customs, labor

safety, sanitary, veterinary, construction or fire standards arising from other regulations) [8, p. 271]. However, the initial principle was freedom of industry, that is, freedom of economic activity. Following World War II this began to change rapidly.

One of the chronologically first pieces of legislation imposing restrictions on the freedom of economic activity in Poland after the communist takeover was a Decree on the Licensing of Enterprises in the Catering Industry, dating back to November 30, 1945 [9]. Its Article 1 in conjunction with Article 2 stipulated that a license was required for the running of catering industry businesses, specifically restaurants, bars, buffets, pastry shops, cafes, etc. According to Article 3 of that decree, the conditions for granting licenses were to be established by the Minister of Provisions and Trade in an ordinance. This executive act [10], issued several months later, contained regulations of various kinds. The standards contained in § 4 that dwellings wishing to call themselves a «restaurant», «café» or «pastry shop» should meet would not be very controversial even today, as Polish law now sets, for example, similar requirements for hotels or motels [11, Article 36].

The next solutions applied are more characteristic of a socialist economy, in which the state sector was to dominate. According to § 6 of the discussed ordinance, it was possible to operate a catering enterprise only after obtaining a license. § 9 established the maximum number of concessions: one enterprise per one thousand residents (§ 9 Section 1), or one enterprise per eight hundred residents (§ 9 Section 2). Such a solution is unprecedented in Poland today. The number of establishments that can operate a particular type of business is limited only for important social reasons, and this currently applies mainly to liquor stores, based on special regulations [12, article 12]. The number of restaurants or cafes is regulated by the free market. In People's Poland, the number was set administratively. Moreover, § 12, Section 1 stipulated that the right to obtain a license to operate a catering enterprise was held by: associations of higher

utility; self-help unions of the struggle for independence; food cooperatives labor cooperatives and, finally, other legal and natural persons. According to § 12, Section 2, priority to obtain a concession was given in the order indicated above. This meant that private entities were placed at the very end which, combined with the administratively limited number of licenses that could be issued, significantly restricted the freedom of private entities to operate in the catering sector. However, the decree on the licensing of catering enterprises was only a prelude to restrictions on the freedom of economic activity of private entities in post-war Poland.

The biggest impact on the size of the private sector of the Polish economy after World War II came from the Law on the Acquisition of Essential Branches of the National Economy into State Ownership of 3 January 1946 (hereafter also: the Nationalization Law) [13]. This statute partly served to exact a kind of retaliation for the German aggression against Poland and to implement the consequences of Germany's defeat in the war. This was served by its Article 2, Section 1, according to which all industrial, mining, communications, banking, insurance and commercial enterprises belonging: The German Reich and the former Free City of Danzig; their legal entities; companies controlled by German or Danzig citizens; and the citizens of the German Reich and the former Free City of Danzig themselves (with the exception of persons of Polish or other nationality persecuted by the Germans) passed into state ownership without compensation.

However, the primary purpose of the discussed statute was to transform the economic system of postwar Poland by increasing the size of the state sector at the expense of the private sector. According to its Article 3, Section 1, the state took ownership of three categories of enterprises. Category A included all enterprises operating in the enumerated industries, which included mining, energy, gas, armaments, aerospace, sugar mills, distilleries, breweries and, depending on the size of the enterprise, grain mills, textile companies or printing

houses, among others. Category B included all other manufacturing enterprises capable of employing more than 50 workers per shift (an exception was made for construction enterprises, which came out of the great need to repair war damage). Finally, Category C included transportation enterprises (railroads and airlines), as well as telecommunications enterprises.

It is worth mentioning that according to Article 7 of the statute under review, compensation was to be paid for enterprises taken over by the State under this provision. It was to be paid within one year (Article 7, Section 1), as a rule, in securities (Article 7, Section 2). The amount of compensation was to be established by special committees (Article 7, Section 3). However, the ordinance of the Council of Ministers announced in Article 7, Section 4, which was to specify the method of appointment and operating procedure of these committees, was never issued. Consequently, in practice, entrepreneurs whose companies were nationalized received no compensation.

The discussed law affected not only the legal situation of already existing businesses. According to its Article 4, the establishment of a new enterprise in the industries listed above as subject to nationalization (categories A and C) was to require a license granted by the competent minister in consultation with the president of the Central Planning Office. The procedure for issuing these licenses was regulated in detail by ordinance [14]. It specified what an application for a license should contain and to which office it should be submitted. However, it did not oblige the state bodies to issue a license once any conditions were met - the decision was entirely discretionary.

Another piece of legislation was passed on the same day as the discussed law nationalizing basic branches of the Polish economy: the Law on Establishment of New Enterprises and Promotion of Private Initiative in Industry and Trade [15]. According to its Article 1, industrial and commercial enterprises not covered by the nationalization laws already analyzed were

inviolable private property. The owners of these enterprises had the right to dispose of them within the framework of existing laws.

According to Section 1 of Article 2 of that law, anyone had the right to establish a new industrial or commercial enterprise, provided that the statutory requirements were met. These requirements should be understood to mean, *inter alia*, obtaining a license when the above-discussed Article 4 of the nationalization law required one. Under Article 2, Sections 2 and 3, the founder of a new enterprise had the right to obtain a certificate from the relevant administrative bodies that his new business was not subject to the provisions of the nationalization law, that is, it was not subject to state seizure for ownership, nor was a license required for its operation.

The regulation introduced in Article 2, Section 4 of the discussed law was interesting: newly established enterprises were not subject to state takeover even if they were capable of employing more than 50 workers per shift in production (i.e., as if they had existed before, they would fall into Category B of enterprises taken into state ownership under the nationalization law).

Article 3 of the discussed law contained an upper-case declaration that the state provides the owners of the enterprises covered by its provisions with the freedom to develop them and support their activities within the framework of the state-wide economic plan.

As can be seen, the private sector of the economy in Poland was significantly reduced after 1945, but despite this, opportunities for private enterprise remained considerable for a country on the eastern side of the Iron Curtain. As stated by economic historian J. Kaliński, *«as a result, the Polish economy was characterized by a mixed ownership system, consisting of state, local government (municipal), cooperative and private ownership occurring side by side. (...) The ownership system formed by 1947 was officially called the three-sector system or, less precisely, the three-sector model. According to the views of the time, the three-sector arrangement distinguished the Polish*

economy from the Soviet economy, which was fully nationalized and subject to a regime of central planning and management» [16, p. 37].

However, 1947 brought changes. After the parliamentary elections in January of that year, the Communists consolidated power. The opposition received only a little over 10% of the vote so its demands no longer had to be taken into account. At that time, the communist bloc still consisted of two parties: Polish Socialist Party (PPS) and Polish Workers' Party (PPR), only a year later merged into the Polish United Workers' Party (PZPR). The previous three-sector model was mainly supported by the former grouping. However, the Ministry of Industry and Trade was controlled by Hilary Minc of the PPR [17, p. 26]. In May 1947, he announced on behalf of the People's Poland authorities: *«We have won the battle over production, and we shall attempt to win the battle over trade»* [18, p. 80]. This heralded imminent changes in the legal situation of private commercial enterprises.

As early as the beginning of June 1947, the Law on Permits for Commercial Enterprises and the Professional Performance of Commercial Activities [19] was passed. Its Article 1 stipulated that the Minister of Industry and Trade could make the performance of some or all gainful commercial activities conditioned on obtaining an appropriate permit. According to Section 1 of Article 2, all details were to be regulated by an executive act issued by that minister.

The relevant ordinance [20] was issued on 22 August of that year. The Minister of Industry and Trade made very extensive use of the powers granted to him by the new law. By means of § 1, Section 1 of this ordinance, he established the general rule that the operation of commercial enterprises and the performance of commercial activities for profit generally required a permit from the relevant authorities. Certain exceptions were provided for in § 1, Section 2, according to which state-owned enterprises, local government enterprises and cooperatives; enterprises under state administration, commercial companies in

which more than half of the share capital belonged to the state, and industrial and craft enterprises selling their own products in company-owned stores were exempt from the responsibility of obtaining a permit. In addition (according to § 1, Section 3), a permit was not required for the sale of agricultural products conducted by the owner of the farm from which they originated. Thus, as can be seen, the vast majority of exceptions to the responsibility of obtaining a permit applied to the state sector. According to § 4 of the discussed ordinance, already existing traders also had to obtain permits. They were given time until 15 November 1947 to submit the appropriate applications.

As for the production sector, the course of action was taken in a manner characteristic of the Stalinist period in Poland, namely, amendments were made to existing legal regulations. The policy change was implemented through changes in the application of the law, including ignoring the regulations still formally in force ¹. In this case, the Law of 3 January 1946 on the Establishment of New Enterprises and Promotion of Private Initiative in Industry and Trade was still in force without amendments. At the same time, the activities of private entrepreneurs were hindered by the state - instead of being supported as declared in this law – in all possible ways, including the introduction of unfavorable tax arrangements or discriminatory tenancy and rent policies [22, p. 39].

The end of the 1940s was also the period in which organizations were created to which private entrepreneurs operating in various industries were required to belong. Article 76 of the aforementioned pre-war Ordinance of the President of the Republic of Poland (in the wording given by the law amending it on 10 March 1934) was used for this purpose [23]. It stipulated that the Minister of Industry and Trade could establish compulsory associations for a particular type of industry. This provision, introduced in 1934, the period of

¹ This was a typical pattern in People's Poland in the late 1940s and early 1950s. A very similar practice took place in the case of spatial planning law, where many of the regulations of the Decree of April 2, 1946 on Planned Development of the State (Journal of Laws 1946 No. 16, item 109) were ignored, instead using conflicting sub-statutory regulations and even internal regulations of administrative bodies. See [21, p. 202-213].

Sanation authoritarian rule, was exceptional even then – it did not find practical application until the outbreak of World War II. It was only the communist authorities that made very extensive use of it. In June 1947, an ordinance was issued creating compulsory associations of the private chemical, paper and manufacturing, wood, metal and electrochemical, and textile industries in particular parts of the country [24]. In April 1948, compulsory associations of private industries were created for the following sectors: fish processing, fruit and vegetable processing, meat processing, manufacturers of building insulation and waterproofing, mineral and building materials, milling, food and fermentation [25]. An ordinance at the end of that year established compulsory nationwide associations of the leather and fur and small miscellaneous manufacturing industries [26]. In October 1949, some previously established organizations were reorganized, creating nationwide compulsory associations of the paper and processing, woodworking, printing, and construction and installation industries, which replaced the corresponding regional associations [27].

Particularly momentous was the Ordinance of the Minister of Internal Trade of 8 November 1949, which established one compulsory association for commercial and service enterprises in each county town and city separated from the county [28]. All such associations from the territory of a single voivodship were to belong to the Voivodship Association of Associations, which in turn were supposed to belong to the Supreme Council of Merchant Associations of the Republic of Poland. A centralized and hierarchically subsidiary organizational structure was thus created that could control private enterprises and influence their activities. Another ordinance was issued in December 1949, replacing regional associations with nationwide associations in other industries, where this had not been done a few months earlier [29].

These legal solutions were the implementation of certain political decisions. Mikołaj Szyszkowski, in his 1948 book «The Tasks of Private

Industry» wrote: *«the need for ever-increasing inter-sectoral coordination and the drawing of private industry into the state-wide economic plan will be the final emphases that will determine that private industry will increasingly become state capitalism and increasingly fuse with the State, while at the same time finding in this its full justification and constituting an essential and inseparable component of the national economy»* [30, p. 9]. Thus, the will of the authorities was the strict organizational and economic subordination of those private enterprises that managed to survive until the end of the 1950s.

The political thaw after the death of Joseph Stalin also took place in Poland. Criticism of Stalinist policies was then allowed, including the state's approach to private entrepreneurs. In 1957, Franciszek Kopeć reported: *«the Eighth Plenum of the Central Committee of the Polish United Workers' Party initiated a new policy of the Party toward the private sector, consisting in the partial reactivation of private initiative in those areas of the economy that had not been fully addressed by the socialist system, or in which the accomplished (not real, but rather formal) socialization was contributing to a regression in both the volume and quality of production and to an increase in its social costs»* [31, p. 54].

Czesław Niewadzi wrote in a 1958 book: *«the destruction of small industry, handicraft and private trade, i.e., those economic bases that conditioned the existence of more than 75% of the total number of small towns in Poland caused the collapse of a significant part of them. This phenomenon occurred clearly as early as 1949-1950 and was the result primarily of a forcible action to socialize trade»* [32, p. 137]. In its conclusion, Niewadzi stated that it was not yet possible to determine the role and place of small-scale manufacturing in the economic model of Poland, which experts were discussing at the time, because its assumptions had not yet been worked out. However, he went on to point out that it was necessary to sort out a number of legal issues: “it is also necessary to develop new legal regulations for the organization and

operation of private enterprises. The laws should clearly define the basis of their activities, so as not to produce a situation of uncertainty of tomorrow *«because this, as is well known, stimulates the speculative activity of private initiative, crossing out the possibility of basing the activities of private enterprises on a rational, sound economic basis. Failure to regulate these matters creates a wait-and-see mood among private entrepreneurs, a reluctance to invest capital in fixed assets, and therefore in productive activities. (...) If a private entrepreneur can be deprived at any time by the state of the license to conduct his business, and the capital invested by him can be taken into state ownership, it is clear that this cannot fail to have a negative effect, from the point of view of the interests of society, on the nature of his business»* [32, p. 184]. Thus, in a publication that was accepted by the censors of People's Poland, there was a firm voice of support for the existence of independent private enterprise to some extent.

At the same time, within the temporarily greater freedom of expression there were also opposing voices in the discussion. Irena Chodak, in a paper published in January 1958 in the monthly magazine *«Planned Economy»* wrote: *«the most urgent issue is to proceed with a thorough analysis of the needs of our economy, which would make it possible to set the right directions and determine the proper scope of development of the unsocialized economy, desirable from the point of view of national interests. (...) On the basis of a thorough discernment of the economic needs of our economy, a verification campaign of private enterprises should be carried out, bringing about the liquidation of unnecessary and often harmful private economic activity. (...) The economic predominance of individual establishments of the non-socialist economy in relation to certain socialist production establishments, instead of leading to the unjust expansion of concessions in favor of private economic activity, should become the impetus for a fierce struggle to heal the socialist economy»* [33, p. 17]. At the same time, Zofia Lewandowska, in her paper *«Some Problems of Private Trade Development»*, published in the same issue of *Planned Economy*,

wrote «*in my opinion, it would be wrong to conclude from the current market situation that it is necessary to return to the old policy of treating private trade as an alien and undesirable element in our economic system*» [34, p. 25].

It should therefore come as no surprise that in view of the People's Poland government's indecisiveness in its approach to private enterprise, which was expressed in its agreement to publish various opinions on the subject, the new legislation enacted in the summer of 1958 was a compromise. The Law on the Permits for the Pursuit of Industry, Handicrafts, Trade and Certain Services by Non-Socialized Economic Units [35] (hereinafter: the 1958 Law) replaced the 1947 Law on Permits for Commercial Enterprises and the Professional Performance of Commercial Activities, discussed above, and extended regulations to other economic activities as well.

Under Article 1, Section 1, in conjunction with Article 2, Section 1 of the 1958 Law, a general obligation to obtain a permit was introduced for non-socialized economic units (i.e., private sector entities) to engage in manufacturing, processing, trade and service activities. The regulations of the new law (according to Article 1, Section 2) did not apply to agricultural, horticultural, forestry and livestock activities; transportation and shipping services; design services for the construction industry; the organization of entertainment ventures; the performance of liberal professions; cottage industry work; health care; and educational and scientific activities.

Article 2, Section 2 of the discussed law exempted from licensing those activities that did not require the provision of materials distributed according to plans for a centrally controlled economy; activities involving the provision of services to the public; and activities traditionally carried out by the rural population as folk and artistic industries. However it was additionally indicated that these exemptions did not apply to trading and catering activities (still regulated by a 1945 decree, which remained in force).

In addition, Article 2, Section 3 of this law exempted from the obligation to obtain a permit those who had reached the age of 60, had employed no more than one person, had worked in their profession for 20 years, and had operated their own craft business for at least 10 years. It can be considered that the legislator thus introduced a kind of peculiar pre-retirement protection.

It should be added that no discretion was left in interpreting the new regulations. According to Article 2, Section 2, paragraph 4 of the discussed law, a detailed list of professions covered by the above-described exception to obtaining a permit was to be established by the Council of Ministers by ordinance. This executive act [36] was issued immediately, also in July 1958. It included a list of 69 professions in the area of handicrafts (e.g., roofing, hairdressing, stonemasonry and carpentry), 20 professions in the area of folk industry (e.g., pottery, embroidery or broom making), 16 types of services (including, for example, room rental of no more than three rooms, which allowed for small private activities in the tourism sector), and several itinerant professions and those related to forestry or fish smoking. It was noted that a permit was not required for occupations in the area of handicrafts if the number of people employed did not exceed four. In 1962, a new ordinance [37] was issued, but it included a similar list of professions.

Article 3, Section 2, Item 1 of the discussed law played a key role in restricting the freedom of private business. It stipulated that the issuance of a permit should be refused when the demand for a given type of goods or services is covered in quantity and quality by units of the socialized economy or by other existing enterprises. This meant that it was impossible to start a business in competition with state sector entities. In addition, Article 3, Section 1 made it possible to make the issuance of a permit contingent on the applicant having certain qualifications, and Article 3 Section 2, Item 2 stipulated that a permit be denied if there was no possibility of obtaining the supplies necessary for the type

of business (with the existence of this possibility being assessed by the administrative body).

According to Article 12, Section 1 of the analyzed act, also those already conducting business on the date of its entry into force were required to obtain a new permit, even if they already had licenses and permits issued under separate regulations (they were given 3 months to do so). If a permit was denied, the authority set a deadline for the cessation of operations, not less than 3 months (Article 12, Section 2 in conjunction with Article 5, Section 4). Thus, the Law on the Permits for the Pursuit of Industry, Handicrafts, Trade and Certain Services by Non-Socialized Economic Units not only restricted the establishment of new enterprises, but also gave tools for the liquidation of existing ones.

In line with Czesław Niewadzi's proposals, the legal framework for the operation of private businesses in People's Poland was cleaned up and regulated comprehensively. However, this did not mean a noticeable increase in the freedom of economic activity. The general approach of the communist authorities to the sector did not change. Ludwik Bar, one of the best-known administrativists publishing in People's Poland, in a paper intended for readers from the capitalist West, explained the situation of private business entities during the period of the 1958 Law as follows: *«The activity of a unit of the non-socialized economy is part of the national economy. It is subject to general economic direction and is expected to serve the public interest. Generally speaking, its role in the national economy is to supplement the activities of the units of the socialized economy. It undertakes and carries on its activities on the principles and conditions laid down by the law, while the kind and the extent of its activities, as well as the way it is organized, are regulated by the law. Legal regulations govern its organization, its economic relations, and even encroach onto the field of technical and other problems»* [38, p. 37]. Thus, the legal restrictions on the economic activities of private enterprises came out of the

merely complementary role to the state sector assigned to them in the political and economic system of People's Poland.

A series of further changes in the regulation of the private sector took place in People's Poland in the 1970s. First, in 1972, the Law of 8 June 1972 on the Execution and Organization of Handicrafts [39] was passed, which, contrary to its name, applied not only to this specific, traditional sector of the economy. According to Article 1, Section 1 of this act, handicraft was considered to be any manufacturing and service business performed by individuals on their own behalf. Several exceptions to this general rule were contained in Section 2 of Article 1, the most important of which were: trading, catering, agricultural and hotel activities, transportation services, surveying and the performance of so-called liberal professions. This primarily meant that private industry disappeared as a separate category. Already in the 1980s, during the period of reforms aimed at saving the socialist economy plunging into an increasing crisis, these changes were criticized: *«it is highly debatable whether the classification of private industry as a handicraft was right and expedient. In a sense, this obliterates the specificity of handicraft, which has been established over centuries and has grown into a rich tradition. The laws and rules that applied to craftsmen, as well as the traditional requirements for acquiring the necessary qualifications and the authorizations that depended on them, were intended to ensure professional service to customers and to shape the craftsman's professional ambition to a high level»*, Maria Gonetowa wrote in a 1988 study [40, p. 15].

This change made the activities of private industry since 1972 subject to handicraft regulations, which, as indicated at the beginning, are beyond the scope of this study. Briefly indicated, the new law contained very detailed regulations on obtaining approvals for conducting activities, acquiring the qualifications required for this, and compulsory membership in organizations of persons engaged in the type of activity in question. These were similar to the traditional rules for handicraft activities (albeit with greater centralization and

subordination to state authorities), and at the same time a complete novelty for those engaged in private industrial activities. As for specific provisions, particular attention should be paid to Article 5, Section 3, which stated that the holder of a handicraft permit could employ up to six workers, as a rule. The application of this provision to industrial business owners set restrictive limits on the development of the enterprise.

Much of the private sector of the economy excluded by the 1972 law from handicraft regulation saw a new legal framework two years later. According to Article 1, Section 1 of the Law of 18 July 1974 on the Exercise of Trade and Certain Other Activities by Non-Socialized Economic Units [41], its provisions applied to the conduct in one's own name of profit-making activities in, inter alia, internal trade and hospitality services. According to Article 2, Section 1 of that law, the activities it regulated could be carried out after obtaining an authorization. Article 2, Section 2 stipulated that authorization took the form of a permit or confirmation of notification. According to Article 2, Section 5, the latter form applied to seasonal activities. Section 1 of Article 6 stipulated that the issuance of an authorization could be denied if the intended business activity, due to its type, size, place of performance or incompatibility with the principles of rational employment of qualified personnel, would be contrary to the public interest. Thus, the new law, unlike the 1958 Law on the Permits for the Pursuit of Industry, Handicrafts, Trade and Certain Services by Non-Socialized Economic Units, did not contain a provision that would absolutely prevent a private entity from starting a business in a situation where it would be in competition with existing enterprises (including state-owned ones), but the general wording of the above-cited provision still gave state administrative bodies a great deal of discretion.

According to Section 1 of Article 4 of the discussed law, detailed rules for issuing authorizations for certain types of activities were to be established by the relevant ministers through ordinances. The most important of these was the

Ordinance of the Minister of Internal Trade and Services of 28 October 1974 [42], concerning, inter alia, trading activities. It contained detailed requirements regarding, for example, the premises in which the business was to be conducted or qualifications confirming knowledge of sanitary regulations, which is not unheard of in the legal systems of capitalist countries.

However, in addition to this, the ordinance also included provisions limiting the possibilities for trade typical of a socialist planned economy - for example, according to § 19, entrepreneurs engaged in agri-food retailing or catering activities could only purchase from agricultural producers and fishermen from the same voivodship in which they operated. Purchasing goods from localities located in other voivodships was possible only in exceptional cases, by special permission. From other provisions of the discussed ordinance it comes out that the activities of private entities were tolerated as complementary to the state sector. According to its § 14, Section 1, as a rule, a permit for commercial activity was issued for a period of 5 to 10 years. However, § 15 allowed the issuance of a permit for an indefinite period of time for agri-food trade and catering activities in towns with up to 20,000 residents and outside the centers of larger cities. Private trade and catering were thus more tolerated where state businesses were fewer in number.

Law on the Exercise of Trade and Certain Other Activities by Non-Socialized Economic Units also contained regulations on the organizations to which those involved in private trade and services were compulsorily required to belong. This was a centralized structure consisting of voivodship associations of private trade and services and the Supreme Council of Associations of Private Trade and Services.

In the 1980s, People's Poland's economy was sinking into a growing crisis. In an attempt to improve the situation and save the entire system from collapse, a number of amendments were introduced that somewhat improved the situation of private entities, for example, in terms of taxation. A novelty was the

Law of 31 January 1985 on Small-scale Manufacturing [43], which in its preamble declared a desire to ensure the development of small-scale manufacturing in accordance with social needs, but did not contain many important innovations, since, according to its Article 4, small-scale manufacturing units carried out economic activities under the rules set forth in separate (i.e., the above-discussed) laws. Economic historian Dariusz Grala, in a study of the economic reforms of the last decade of People's Poland, assessed: *«It seems that the scope of freedoms and possible spheres of activity for private business were defined in legal acts so as not to harm the dominant state economy, i.e. not to allow the creation of competition in sales to consumers, but only to supplement the production and services of the socialized sector in meeting the needs of the population, or in occasional cases, to assist in the production of state-owned plants dependent on the supply of certain components produced only abroad»* [44, p. 259]. Thus, the general approach of the People's Poland authorities to private enterprises in the 1980s did not change. As Janusz Kalinski wrote: *«reforms were understood by the Communist Party as activities within the political system it had created. They could not undermine the basic canons of the political system, and their task was to preserve the economic system through surface changes aimed at increasing macroeconomic efficiency»* [22, p. 33].

A completely separate area of regulation of private economic activity, specific to People's Poland, were the regulations on so-called «Polonia companies». These were to be private enterprises established by Polish emigrants who wished to return to Poland with capital earned abroad and invest it in their own business [45, p. 51]. The first legal act regulating this issue was the Ordinance of the Council of Ministers on the Issuance of Permits to Foreign Legal and Natural Persons to Conduct Certain Economic Activities, issued in 1976. [46]. On its basis, permits for business activities in the field of handicrafts, internal trade, hotel services and other services could be obtained by legal

entities based abroad, Polonia organizations based abroad, individuals permanently residing abroad and citizens of other countries with the right of permanent residence in Poland. In 1982, the Law on the Principles of Conducting Business Activities in the Field of Small-scale Production by Foreign Legal and Natural Persons on the Territory of the People's Poland [47] was enacted, which expanded the possibilities for Polish companies to operate in the production sector and introduced a number of other changes. Toward the end of People's Poland, another piece of legislation was introduced to regulate these issues, but its life was short [48].

All the legislation discussed in this paper, if not replaced by later versions of the regulation of these areas, was reversed by the Law on Economic Activity of 23 December 1988 [49]. This piece of legislation is commonly known in Poland as the «Wilczek Law» after its creator, Mieczysław Wilczek, Minister of Industry in the last communist government before the 1989 transformation, headed by Mieczysław Rakowski [50, p. 471-473]. The new law introduced a few brief rules. Its Article 1 stated that undertaking and carrying out economic activity was free and permitted to everyone on equal terms, subject to the conditions set by law. According to Article 2, economic activity was manufacturing, construction, trade and service activities conducted for profit and on one's own account. A radically different approach than that known from the earlier regulations discussed above is evidenced by subsequent provisions: Article 4, stating that business entities, in the course of their business activities, may perform acts and activities that are not prohibited by law (the principle that everything that is not prohibited is permitted), Article 5, stating that a business entity may employ an unlimited number of workers and Section 1 of Article 6, according to which business entities had the right to associate in organizations on a voluntary basis. Article 8 stipulated that the commencement of economic activity required registration. This means that from the end of 1988, permission was no longer needed to engage in private commercial, manufacturing or service

activities. As a rule, regulation in this area was ended. Few exceptions were stipulated by Section 1 of Article 11, and these included the production of medicines, the operation of pharmacies or the manufacture and trade of weapons, i.e. special areas of the economy that are subject to separate regulation in virtually all capitalist countries.

It should be noted that the preceding analysis concerned only the issue of the control of economic activity of private industry, trade and services in People's Poland. At particular periods, this activity was also subject to restrictions under various other regulations. As an example, the tax law also had non-fiscal purposes with regard to private business entities. Andrzej Gomułowicz pointed out: *«One of the objectives of tax policy toward units of the non-socialized economy may be to promote or suppress certain economic activities. The means that leads to this goal is a lower or higher tax burden on the respective activities of these entities»* [51, p. 132]. In his work, he also cited the views of Stanisław Nieckarz, who wrote that *«taxes should be more boldly used as an instrument to reduce the socially undesirable spread of earnings, to eliminate undeserved income, to blunt enrichment at someone else's expense. This is what all people of honest work expect»* [51, p. 132] and J. Dziewiński, claiming that: *«the [sales] tax will make it possible to effectively curb excessive, socially unjustifiable income»* [51, p. 132]. Yet another issue, for instance, is the public procurement law, structured in People's Poland to limit the ability of private business entities to carry out state contracts as much as possible [52, p. 368]. These issues have not yet been the subject of historical-legal research and require a separate, detailed study.

In conclusion, it should be said that the regulations governing the activities of private entities in the fields of industry, trade and services in People's Poland evolved, leaving entrepreneurs with more or less freedom of action, depending on the current policy of the communist authorities. However, this state, throughout its existence, was based on a system of centrally planned

economy and the domination of state-owned economic entities. The contemporary principle of freedom of economic activity did not exist. Instead, administrative and legal regulation of such activity was carried out.

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