

PROBLEMS OF LEGAL DEFINITION OF FAMILY FARM IN POLAND

PROBLEMATIKA PRÁVNEJ DEFINÍCIE RODINNEJ FARMY V POĽSKU

.....
Damian PUŚLECKI*

I. Introduction

The support schemes of the Common Agricultural Policy emphasize the role of family farms as the most significant organizational forms in agriculture. The United Nations declared the year 2014 as the International Year of Family Farming. Political changes made in Poland in the nineties raised the profile of family farming. Pursuant to Article 23 of the Constitution of 1997, the family farm serves as a basis for the agrarian system of Poland. A special status given to the family farm among the political system principles was a typical feature of the agrarian structure at that time. Agriculture is not a usual sector of the economy since the workplace may, at the same time, be a place of residence. An agricultural activity performed on family farms is strictly connected with activities taken within a household.

An agricultural activity often entails various actions taken by an agricultural producer outside the farm. On the other hand, there is a very close connection between an agricultural activity and a household. Typical qualities of agricultural work include: no time framework, changing working conditions, multitasking, seasonality and the necessity to use help of relatives, including children. On the other hand, it needs to be emphasized that agricultural farms are diversified, which does not result only from such aspects as area, equipment, technical devices or the number of working people but also from the size of production⁽¹⁾.

⁽¹⁾ KREMER, E. 2004. Odpowiedzialność za zobowiązania związane z prowadzeniem gospodarstwa rolnego, Kraków.

The attempts to form the agricultural system in Poland were made in the Constitution of 1997, which pointed out the directions for detailed legal regulations. The Act on the Agricultural System has introduced the concept of the family farm. The family farm as a legal category has been causing many doubts ever since. These doubts have not been eliminated even by numerous reference books, which criticize the existing solutions.

II. Material and research methodology

This paper aims at identifying particular elements of a legal definition of a family agricultural farm, which entailed the necessity to analyse the terms used in applicable legal regulations, namely the Constitution of the Republic of Poland⁽²⁾ and the Act of 11 April 2003 on the Agricultural System⁽³⁾. It is not possible to discuss these issues without a historic context which has deeply impacted the current shape of family farms. The main research methods used in the paper include a legal analysis of a normative text, an analysis of the opinions presented in the reference books and the descriptive method. The article evaluates existing legal regulations and attempts to indicate typical features of a family agricultural farm which need to be considered while creating its real legal definition.

⁽²⁾ Constitution of the Republic of Poland of 2 April 1997 (Journal of Laws, No. 78, Item 483).

⁽³⁾ Act on 11 April 2003 on Agricultural System, consolidated text: Journal of Laws of 2012, Item 803.

Abstract (EN)

The paper discusses the issues relating to the legal definition of the family farm as the foundation of the agricultural system in Poland. According to Article 23 of the Constitution of 1997, the family farm is the basis of the Polish agricultural system. By means of analysing the provisions of the Constitution and the Act on the Agricultural System, the paper points out current tendencies in the Polish agricultural system. The main aim of this article is to identify individual elements of the legal definition of the family farm and to evaluate already existing solutions on the matter. The final part of the paper presents *de lege ferenda* postulates.

Keywords (EN)

family farm, agricultural system, farming

Abstrakt (SK)

Príspevok sa zaoberá problematikou právnej definície rodinných fariem, ktoré podľa článku 23 Ústavy z roku 1997 tvoria základ pre poľský poľnohospodársky systém. Prostredníctvom analýzy ustanovení Ústavy a zákona o poľnohospodárskom systéme, príspevok poukazuje na súčasné tendencie v poľskom poľnohospodárskom systéme. Hlavným cieľom príspevku je identifikovať jednotlivé prvky právnej definície rodinnej farmy a ohodnotiť už existujúce riešenia danej problematiky. Záverečná časť práce predstavuje úvahy o vývoji danej problematiky v budúcnosti.

Kľúčové slová (SK)

rodinná farma, poľnohospodársky systém, hospodárenie

* Poznań University of Life Sciences, Poland

III. Constitution of the Republic of Poland of 1997

Pursuant to Article 23 of the Constitution of Poland of 1997, the basis of the agricultural system of the State is the family farm. The rule does not infringe Articles 21 and 22. Although the Constitution introduces the term of the family farm, it does not define it.

The above-mentioned constitutional rules are of a general character. They are the foundation of the agricultural system which was supposed to be clarified by the legislator in the future. The constitutional provision should be perceived as a kind of declaration in respect of statutory regulations relating to that system⁽⁴⁾. Giving the “family farm” the status of the basis of the system reflects the actual situation developed in the Polish agriculture.

The agricultural system, which can be distinguished as part of the social and economic system, is based on family farms⁽⁵⁾. The agricultural law defines the agricultural system as the system of ownership relations and forms of organizing production in agriculture. Recognizing an agricultural farm for the “basis” of the system means that the family farm is a “vital element” of that system. The constitutional norm reflects the certainty that this situation is going to be kept also in the future⁽⁶⁾. The Article 23 of the Constitution, however, is merely a “political guideline for the future” or a “constitutional principle”⁽⁷⁾ which ensures that family farms have suitable conditions to exist and develop⁽⁸⁾.

The Article 23 of the Constitution can be deemed to be a particular form of protection of family farms. Although the doctrine has been divided on that matter⁽⁹⁾ it needs to be emphasized that the rules underlying the shaping of the agricultural system of the State must not exclude the protection of such values as ownership and the right of succession as well as the right of the freedom of economic activity (Articles 21 and 22 of the Constitution). It is allowed, however, to modify the scope of protection of the basic categories in connection with family farms. Giving the family farms the status of the basis of the agricultural system does not, however, ban other types of agricultural farms.

It needs to be noticed that among all farms run by agricul-

⁽⁴⁾ LICHOROWICZ, A. 2001. Konstytucyjne podstawy ustroju rolnego Rzeczypospolitej w świetle artykułu 23 Konstytucji, in: Konstytucyjne podstawy systemu źródeł prawa, ed. M. Wyrzykowski, Warszawa.

⁽⁵⁾ DOMAŃSKA, A. 2001. Konstytucyjne podstawy ustroju gospodarczego Polski, Warszawa.

⁽⁶⁾ PRUTIS, S. 2015. Status prawny rodzinnego gospodarstwa rolnego w polskim prawie rolnym (ocena stanu regulacji), in: Prawne mechanizmy wspierania i ochrony rolnictwa rodzinnego w Polsce i innych państwach Unii Europejskiej P. Litwiniuk (ed) Warszawa;

⁽⁷⁾ STELMACHOWSKI, A. 2013. In: System prawa prywatnego, Volume III, Prawo rzeczowe, ed. E.Gniewka, third edition, Warszawa.

⁽⁸⁾ ZDZIENNICKI, B. 2013. In: Prawo rolne, P. Czechowski (ed), Warszawa.

⁽⁹⁾ PRUTIS, S. 2015. Status prawny rodzinnego gospodarstwa rolnego w polskim prawie rolnym (ocena stanu regulacji), Warszawa.

tural producers the Constitution raises the status of a special agricultural farm, namely the family farm. The family farm is formed by strictly combining an agricultural farm and a household. The constitutional model of the family farm combines subjective elements (family) and objective elements (farm). The family farm means the farm, which supports the farmer’s family⁽¹⁰⁾. Such farms are based on farmer’s own work and the work performed by their family. They often include multigenerational agricultural farms and, undoubtedly, social farms of a production character which, in practice, do not produce for the market.

What the protection of the family farm boils down to is that the family farms is an entity which should be given preferential treatment by the legislator within the agricultural system. The agricultural activity, therefore, should be run mainly on family farms and any support instruments should be established for the benefit of these farms. It seems justified, obviously, to additionally connect the concept of the family farm with the family protection under Article 18 of the Constitution. It should be the family as the collective entity (a community of individuals) that runs the family farm. In terms of the system, therefore, it matters who runs the farm, which serves as the basis of the agricultural system⁽¹¹⁾.

IV. First statutory regulation of the family farm

Pursuant to Article 5 of the Act of 11 April 2003 on the Agricultural System, the family farm means the agricultural farm:

- 1) which is run by an individual farmer, and
- 2) whose total surface area of agricultural lands does not exceed 300 ha.

An individual farmer, mentioned in the definition of the family farm, is a natural person who is an owner, a perpetual lessee, an autonomous possessor or a lessee of agricultural property whose total surface area of agricultural lands does not exceed 300 ha, having agricultural qualifications and residing for at least 5 years in the commune where one of the agricultural properties included in the agricultural farm is located, and running the farm in person (Article 6(1) of the Act).

So broadly defined area criteria of the family farm do not seem to be reasonable. They serve as a good example of adjusting the terminology to the objectives of agricultural policy. Those provisions originally intended to give farmers more possibilities to purchase lands if too small surface area of used land hindered the enhancing of the production scale. Due to relatively low supply of lands intended for sale and their high prices it has been decided that, especially in connection with the lands from the Treasury Stock, such a rule applied to distinguish family farms will allow bigger number of farms to strengthen their production potential⁽¹²⁾.

⁽¹⁰⁾ WINCZOREK, P. 2000. Komentarz do Konstytucji Rzeczypospolitej Polskiej z dnia 2 kwietnia 1997 r., Warszawa.

⁽¹¹⁾ RAKOCZY, B. 2015. Gospodarstwo rodzinne jako podstawa ustroju rolnego w świetle Konstytucji RP z 1997 roku PpoŚ Toruń.

⁽¹²⁾ SIKORSKA, A. 2015. Dylematy w definiowaniu rodzinnych gosp-

The existing law uses the concept of the “family farm” but the legislator, however, does not refer to the “family” character of the farm at all. All subjective factors (agricultural qualifications, registered residence and, especially, running and taking all decisions concerning the farm in person) relate to an individual natural person running a farm. As a result, the definition refers to an individual farm run by one person, including, which may be found bizarre, a farmer who is single. Therefore, the definition does not refer to the family farm unless we assume that the defining feature of the family farm is only its surface area, which cannot exceed 300 ha of agricultural land⁽¹³⁾.

It needs to be stressed that the Act in question was amended twice within the last year. None of those amendments, however, made definition of the family farm more precise. The bill of the Act on Suspension of Sale of Property from the Agricultural Property Stock of the State Treasury and Amendments to Certain Acts, including the Act on the Agricultural System legislator suggests adding the following preamble:

The preamble of the Act in question reads as follows: “To strengthen the protection and development of family farms which under the Constitution of the Republic of Poland serve as the basis for the agricultural system of the Republic of Poland, to ensure the proper development of the agricultural land in Poland, in the interest of the food safety of the citizens and to support the sustainable agriculture run in compliance with the environmental protection requirements and contributing to the development of rural area, the following Act is being passed”. The impression is, undoubtedly, that statutory changes relate mainly to the control of real estate trading, with a special attention given to foreigners.

V. The assessment of legal regulations

First Polish regulations relating to the legal status of family farms under the Act of 11 April 2003 are barely noticeable. Apart from the fact that the definition itself was technically poorly drafted (the definiens includes references to two further legal definitions and, what is even worse, those definitions are of a similar scope), the criteria to determine a family character of a farm included in the definition also raise reservations. The criteria significantly differ from those applied in other Western European countries⁽¹⁴⁾. The reason for that was that the definition of the family farm was formed additionally to the main purpose of the Act, which was the control of real estate trading.

One of the biggest challenges of agricultural law is to form a definition of the family farm which would reconcile often conflicting interests of diversified Polish agriculture. Current

.....
odarstw rolnych, IERiGZ PIN Warszawa.

⁽¹³⁾ PRUTIS, S. 2015. Status prawny rodzinnego gospodarstwa rolnego w polskim prawie rolnym (ocena stanu regulacji), Warszawa.

⁽¹⁴⁾ LICHOROWICZ, A. 2005. Regulacja obrotu gruntami rolnymi według ustawy z 11.IV.2003 r. o kształtowaniu ustroju rolnego na tle ustawodawstwa agrarnego Europy Zachodniej, *Studia Iuridica Agraria*, Volume IV, Białystok.

area conditions under the Act on the Agricultural System (up to 300 ha) are met in Poland by more than 99% agricultural farms. There are 2388 large-area farms and they account for merely 0,2% of the total number of agricultural farms. It is forbidden in the Polish legislation, however, to form legal definitions for the currently existing situation since not all the farms, which do not exceed 300 ha, display typical traits of family farms.

The current statutory definition of the family farm is only an illusion. It was not formed in the legal act intended to protect and support those farms. It does not refer to family traits of the agricultural activity. The applied area criterion corresponds neither to the needs nor capabilities of a typical agricultural family. What needs to be stressed is that the farm of the surface area close to the minimal surface area will not provide the farmer's family with a suitable level of income while the farm of a surface area close to the maximum surface area will require to use help of people who are not family members⁽¹⁵⁾.

None Polish legal act determines the relationship among particular categories of agricultural farms - an agricultural farm, an individual agricultural farm and a family farm. Although these terms refer to different types of farms, they are often used interchangeably in many papers. Not every agricultural farm is run by agricultural producers who perform an agricultural activity on their own account, who are subject to specific rules of agricultural social insurance and who are not subject to the employment relationship. Not every individual farm is a family farm. It needs to be emphasized that there are also “non-individual farms” and there still might appear agricultural farms which are a public property. Another striking fact is a big number of not precise definitions of agricultural farms in other legal acts, including the Polish civil code.

Too general statutory definition does not contribute to the protection of family farms. Nowadays, Polish family farms are highly diversified. The definition under the Act on the Agricultural System applies the subjective criterion, namely the surface area of agricultural lands and the objective one which puts the individual farmer in the definition of the family farm. The criterion does not lend itself to distinguish between family farms and other types of agricultural farms.

VI. Rational legal distinction criteria - individual nature of the family farm

There are certain relations, which need to be taken into account while determining characteristic features of family farms for the purpose of future legal regulation.

Firstly, there is no precisely drafted, accepted and commonly used definition of the family farm. The research conducted by the FAO found that there are as many as 36 used definitions in the world, including 10 drafted for the research purposes and 10 prepared by the governments for the pur-

.....
⁽¹⁵⁾ PRUTIS, S. 2015. Status prawny rodzinnego gospodarstwa rolnego w polskim prawie rolnym (ocena stanu regulacji), Warszawa.

pose of applied agricultural policy. Family farms are defined by means of economic, social or cultural criteria such as family labour, managing the farms by a family member, the size of the farm as well as the volume of agricultural production. The definitions often use numbers or descriptions. Another crucial element is the purpose of a given definition.

Secondly, the concept of the family farm is intrinsically connected with the concept of agricultural farm. The huge number of definitions of the agricultural farm together with lack of precision of these terms in Polish law will not help future legislative works.

Thirdly, in the historical approach, the characteristics of family farms were strictly connected with defining the peasants working on the farm together with their families and dividing the generated income depending on the needs⁽¹⁶⁾. The economic definition of the family farm puts a strong emphasis on the connections between the farms and the family that runs the farm since the family farm means “an independent production unit where main production means belong to the owner (the head of the family), who acts as a manager, the work is performed mainly by the owner and their family and the property and managing is passed down from one generation to another, and the household is not separate from the production unit and the running of the farm brings income”⁽¹⁷⁾. Therefore, it is vital that there is often a strong, unbreakable connection between the agricultural farm and the family farm.

Fourthly, the protection of family farms is connected with the protection of the family that supports its members by running the agricultural farm. It directly relates to the role of the State, which in the public interest should strengthen the rights of individuals and their communities. The protection is also of a general nature since it is specifically included in the Constitution. The concept of the family should be associated mainly with the institution of marriage, family ties, emotional and legal bonds.

Fifthly, the agricultural activity in the family farm is based on work performed by family members and this is the most significant “capital contribution” ensuring its proper functioning. The duties on the agricultural farm are divided by the “managing farmer” among all family members, including himself and children. The main labour force on the family farm, therefore, includes household members, which is an essential connection between a household and the agricultural farm. Therefore, the activity run in any civil-law form, as sole proprietorship or civil-law companies or commercial companies with corporate relations are excluded for this group of farms. Members of the family farm constitute a very hermetic group as they should not include other people than a farmer, their spouse or a household member. Another debatable issue is the possibility to use paid work which is not of a typical barter nature but is based on employment relation and other civil-law relations⁽¹⁸⁾.

Sixthly, the income generated by means of the agricultural

activity should be the main source of family-supporting income. As it has already been indicated, even if a farmer does not produce for the market, the farm is often the only security for the family (subsistence-social farms). Therefore, it excludes income coming from other sources unless it plays only an additional, supportive and not a dominant role - the category of a farmer-entrepreneur who has two professions. The fact that non-agricultural income accounts for the majority of farmer's income does not seem sufficient to determine the nature of the farm.

Seventhly, the family farm is defined by means of the ownership relations in agriculture, which refers to the set of means needed to run an agricultural activity. This is mainly the owners of the production property together with the whole families who live on the site of the agricultural farms. There are, however, other forms of possessions, which mainly refer to agricultural lands - perpetual lease, autonomous possession or a lease. Passing individual farms down from one generation to another is one of the most typical characteristics of family farms. The ownership is the main criterion, which determines the continuity of running an activity on agricultural lands.

Eighthly, individual farms encompass the following groups of family farms: commodity farms which produce mainly for the market, semi-subsistence farms where only a small production part is designed for the market, subsistence farms which do not produce for the market and where the whole production is used to maintain the farmer and their family, agritourism farms whose purpose is to offer leisure activities, with no typical agricultural production. What needs to be stressed is that out of all those groups indicated above only subsistence farms will always be able to be classified as family farms.

Ninthly, as for the area criterion, it needs to be emphasized that there are both small and large family farms but, as it has been mentioned before, the applicable area criteria are not a sufficient feature of those farms. Family farms are usually identified with the farms of a small surface area or of a small economic size. Large agricultural farms cannot, in practice, be served by family members and it is necessary to “employ workers”. Any area criterion applied in the future to define the family farm will need to be accompanied by a sort of rational limitation even if it seems a bit artificial. The current Poland's agrarian structure definitely needs to be taken into account.

Tenthly, the family relationships in agriculture, due to the nature of the performed work, have often been used to determine the entities subject to the protection of the ability to work in the schemes of agricultural social insurance. It refers mainly to self-employed farmers and their family members and not to all people working in agriculture (e.g. farmers' workers). Under the Act on the Social Insurance of Farmers, the above-mentioned entities include a farmer, their spouse and a household member (Articles 7 and 5 of the Insurance Act). Similar, although with some exceptions, regulations can be found in other countries with agricultural subsystems of social insurances. On the contrary to the Polish law, Italian, German and French laws cover also the farmer's children who are below 16 years old.

⁽¹⁶⁾ SIKORSKA, A. 2015. Dylematy w definiowaniu rodzinnych gospodarstw rolnych, IERiGZ PIN Warszawa.

⁽¹⁷⁾ WOŚ, A. 1998. Encyklopedia agrobiznesu, Warszawa.

⁽¹⁸⁾ INACZEJ ŁOBOS-KOTOWSKA, D. 2006. Gospodarstwo rodzinne. Prawne formy organizacji, Sosnowiec.

VII. Conclusions

Although the Act on the Agricultural System has been adopted, the issue of the agricultural system has not been regulated in a comprehensive way under the Polish law. It is still a huge disadvantage noticed in the doctrine. The current legal regulation does not give a rational definition of the family farm. The analysed Act on the Agricultural System offers just a poor substitute and is totally out of touch with reality. The legislator using area and subjective criteria has not made a proper distinction between family farms and other types of individual farms. The economic reference books define the family farm by means of such features as using family labour force, managing the farm by a family member, the size of the farm or the size of agricultural production. The Polish legislator, however, seems to overlook the most crucial characteristics. Such factors as the connection between the agricultural farm and the household, family relationships and protection, multigenerational character of farmer families, family labour force, protecting the ability to work in agriculture, ownership relations, family income and relationship with a legal successor constitute vital attributes of family farms. Creating a new rational legal definition of the family farm still requires proper statutory legislative work. While working on another amendment to the Act it is worth taking on board the issues pointed out in this paper. The most significant criterion, though, which must not be overlooked is the need to protect family farms, which constitute and are bound to constitute the basis for the agricultural system in Poland.

References

1. DOMAŃSKA, A. 2001. Konstytucyjne podstawy ustroju gospodarczego Polski, Warszawa.
2. LICHOROWICZ, A. 2001. Konstytucyjne podstawy ustroju rolnego Rzeczypospolitej w świetle artykułu 23 Konstytucji, in: Konstytucyjne podstawy systemu źródeł prawa, ed. M. Wyrzykowski, Warszawa.
3. LICHOROWICZ, A. 2005. Regulacja obrotu gruntami rolnymi według ustawy z 11. IV. 2003 r. o kształtowaniu ustroju rolnego na tle ustawodawstwa agrarnego Europy Zachodniej, *Studia Iuridica Agraria*, Volume IV, Białystok.
4. LICHOROWICZ, A. 2000. Status prawny gospodarstw rodzinnych w ustawodawstwie krajów Europy Zachodniej, Białystok.
5. ŁOBOS-KOTOWSKA, D. 2006. Gospodarstwo rodzinne. Prawne formy organizacji, Sosnowiec.
6. RAKOCZY, B. 2015. Gospodarstwo rodzinne jako podstawa ustroju rolnego w świetle Konstytucji RP z 1997 roku, *Przegląd prawa ochrony środowiska Toruń*.
7. PRUTIS, S. 2015. Status prawny rodzinnego gospodarstwa rolnego w polskim prawie rolnym (ocena stanu regulacji), in: *Prawne mechanizmy wspierania i ochrony rolnictwa rodzinnego w Polsce i innych państwach Unii Europejskiej* P. Litwiniuk (ed) Warszawa.
8. SIKORSKA, A. 2015. Dylematy w definiowaniu rodzinnych gospodarstw rolnych, *IERiGŻ PIN* Warszawa.
9. STELMACHOWSKI, A. 2013. System prawa prywatnego, Volume III, *Prawo rzeczowe*, ed. E. Gniewka, 3rd edition, Warszawa.
10. WINCZOREK, P. 2000. Komentarz do Konstytucji Rzeczypospolitej Polskiej z dnia 2 kwietnia 1997 r., Warszawa.
11. WOŚ, A. 1998. *Encyklopedia agrobiznesu*, Warszawa.
12. ZDZIENNICKI, B. 2013. In: *Prawo rolne*, P. Czechowski (ed), Warszawa.

Contact address/ Kontaktná adresa

Damian Puślecki

Department of Management and Law, Faculty of Economics and Social Sciences, Poznań University of Life Sciences, ul. Wojska Polskiego 28, 60-637, Poznań, Poland
e-mail: damian.puslecki@up.poznan.pl