

RULES OF MANAGEMENT OF AGRICULTURAL REAL PROPERTY OF THE TREASURY IN POLAND

Анотація. Стаття фокусується на правових інструментах, що становлять правову систему сільського господарства Республіки Польща.

Ключові слова: структура сільського господарства, правова система сільського господарства.

Аннотация. Статья фокусируется на правовых инструментах, составляющих правовую систему сельского хозяйства Республики Польша.

Ключевые слова: структура сельского хозяйства, правовая система сельского хозяйства.

Summary. A substantial part of agricultural properties still remains administered by the country. Rules of their administration were regulated by the management of agricultural properties of the Treasury act of October 19, 1991, by virtue of which the Agricultural Property Agency of the State Treasury was established. In the initial stage of its activity, its main task was taking over property remaining after the liquidation of the State Agricultural Farms. In the beginning of the 21st century, on the basis of provision of the constitution of the agricultural system act of 11th April 2003, the Agricultural Property Agency of the State Treasury was transformed into the Agricultural Property Agency, which tasks, apart from management of agricultural properties of the State Treasury, included a series of tasks related with an active national policy run in aid of positive agrarian transformations in Poland.

Key words: Family agricultural farm, agricultural system, Agricultural Property Agency, Agricultural Property Agency of the State Treasury.

A substantial part of agricultural properties still remains administered by the country. Constitution of the agricultural structure is governed by an active agricultural policy [1;19], mechanisms of which include legal and institutional forms. Among these first forms, a key role is played by two principal legal documents, i.e. management of agricultural properties of the Treasury act of October 19, 1991 [2] and constitution of agricultural system act of April 11, 2003 [3]. The main institution that is preoccupied with transformation of the agrarian structure of Polish agriculture is the Agricultural Property Agency. Other forms that have an influence on the dynamics of structural transformation include retirement and disability pensions, soft loans and instruments functioning within the scope of current Rural Development Programme 2007 – 2013, including: structural pensions, direct subsidies or groups of agricultural producers [4].

Management of State Treasury real-estate properties from pursuant to the act of 1991.

Issue concerning rules of disposing agricultural properties are regulated by regulations of the management of agricultural properties of the State Treasury act of October 19, 1991. According to article

1 of this act, regulation on management of state properties regard:

agricultural properties, assigned in land development plans for aims of agricultural economy, with the exception of grounds administered by State Forests and national parks.

properties remaining after the liquidation of State Agricultural Farms and their associates.

forests not geodesic separated from properties

The act includes earlier specified properties administered by national organisational units, properties of perpetual usufruct by natural and legal persons, properties at perpetual usufruct or ownership by legal and natural persons and other organisational units and properties of the State Land Fund. This regulation also concerns agricultural properties taken over to the benefit of the State Treasury on the basis of administrative decisions or on any other account.

In order to manage lands after the liquidation of State Agricultural Farms and those remaining at disposal of the State Land Fund, pursuant to the management of agricultural properties of the State Treasury act of October 19, 1991, a decision on establishing the Agricultural Property Agency of the State Treasury [5]. By the means of the Agency, a new philosophy of management of state properties was

introduced into Polish agriculture. Ownership rights of them was to be executed by a separate state legal person, at maintaining State Treasury rights to the properties put for management. On this basis, the institution of Agricultural Property Stock of the State Treasury was formed, which included e.g. properties of the State Land Fund and other agrarian real-estate properties, owned by the State Treasury [6;33-44]. The aim of establishing the Agency was to turn from multi-subject character of state agrarian property in the direction of one powerful unit of wide authorities and realisation abilities [6;60]. A. Zieliński, speaking about its aims, states that management of agricultural properties act determines three basic tasks of the Agency: taking over, restructuring and management of properties [7].

The Agency functioning started on the 28th January 1992 at the moment of appointing its President [8]. The decision included in the Prime Minister regulation from the 16th of March 1992, it acquired its statute, which is the basic document enabling substantive and organisational activities of its bodies. Pursuant to the Agency President regulation from the 18th March 1992, it acquired its Organisation Regulations and the fundamentals for establishing regional branches. At the turn of February and March, the Agency President along with governors, representatives of the State Agricultural Farms and directors of voivodeship branches of the BGZ bank, accepted agreements concerning rules of organisation of the Agency regional branches and ways of taking over former agricultural properties of the State Farms into the Agricultural Property Stock of the State Treasury. These agreements concerned in particular:

- preparation by founding bodies of State Agricultural Farms the formal-legal documentation (including geodesic documentation) of the properties managed by the State Agricultural Farms,

- elaboration by founding bodies projects of schedules of taking over properties of the State Agricultural Farms by the Agricultural Property Agency of the State Treasury,

- providing by founding bodies summarised information about forms of a survey about agricultural farms subject to being taken over to the Stock,

- providing by national administration bodies up-to-date information concerning management of the State Land Fund (issues regarding amounts of lands falling under contracts of tenancy and lease, lifelong use by pensioners and annuitants, data concerning administrative proceedings in relation to charges of illegal taking over lands to the benefit of the State Treasury),

- excluding from lands managed by the State Land Fund forests and land assigned for forestation, which pursuant to the state forests act of September 28, 1991, were to be taken over by State Forests [9],

- sequences of taking over properties of the State Land Fund (there was accepted a rule to first include in the Stock properties for which purchasers were already found) [10].

The Agency was established mainly to take over into the Agricultural Property Stock of the State Treasury properties of the liquidated State Agricultural Farms, properties owned or administered by natural, legal persons or other organisational units, additionally being members of State Land Fund. It was assumed that the above aims were to be achieved by the end of 1993. However, it was possible to realise them only partially in that period. In 1993, the process of liquidation of State Agricultural Farms was substantially finished and the takeover of its property lasted till 1995.

The Agency executed also a series of tasks resulting from the general assumptions of the national policy concerning agriculture and rural areas. Realising these assumptions, its task was in particular:

- establishing favourable conditions for rational utilisation of the manufacturing potential of the Stock of State Treasury,

- restructuring and privatisation of the State Treasury properties, used for agricultural aims,

- traffic of real-estate properties and other components of the State Treasury property, used for agricultural aims,

- administration for the State Treasury property assigned for agrarian aims,

- establishing agricultural farms,

- preservation of the State Treasury property,

- running official and agricultural works at State Treasury lands and supporting establishment of private agrarian farms there,

- job creation in relation to restructuring of the State Agricultural Policy.

Considering tasks realised by the Agency, two principal stages can be distinguished in its activity. The first of them concerns the years 1991-1995, when its main mission was the liquidation of state farms and efficient handing lands over to new users. In pursuant to the Act of 19th October 1991, all State Agricultural Farms, which were subject to this process were liquidated [11]. A decision whether to hand over to Agency properties of the State Land Fund, which were leased or directly owned by the administration, fell within the competence of governors. Completely separate procedures regarded lands being a subject of management or use.

In the second period of Agency activity, i.e. in the years 1995-2003, its main task was the issue of administration at a substantial area of state land. The repartition function realised by Agency was unsuccessful as the main form of management became a lease what was only a temporary solution. Only a small part of land was taken over by new owners [12].

Due to problems with disposing state properties, the need to introduce changes at the level of legal solutions arouse. Additionally, transformation is organisational structures were done, establishing the Agricultural Property Agency, which is a kind of the third period of development of the Agricultural Property Agency of the State Treasury.

Tasks of the Agricultural Property Agency in constituting agricultural system

Substantial changes in the scope of agricultural policy, especially agrarian economy, was agricultural constitution act of 11th April 2003. By its virtue, in place of the Agricultural Property Agency of the State Treasury, a new governmental institution called the Agricultural Property Agency was brought into existence [13]. This Agency is to realise the following aims:

- improvement of areal structure of family agricultural farms,

- counteracting an excessive concentration of agricultural properties by limiting the maximal area of a family farm to 300 hectares of arable ground.

- assurance of management of agricultural farms by persons educated in this field by mitigation of criteria concerning proper qualification and professional experience of individual farmers running agricultural farms [14].

The Act realises provisions of the already mentioned article 23. of the Constitution of Poland, according to which, a fundament of the Polish agricultural system is a family run farm [15]. As it is emphasised by Waclav Sharlinski „the act on constitution of agricultural system modified pervious privatisation-social mission of the Agency, increasing the scope of tasks related with improving areal structure of agricultural farms” [16;6].

Supervision over is in the hands of the minister responsible for rural development. The Agency acquired authorities to represent ownership rights and other property laws in relation to property administered by the State Treasury. It was entrusted executing on own behalf any rights and obligation regarding handed property in relation to third parties, as well as exercising all public and legal responsibilities. The Agency owns any properties purchased with own resources, assigned for the aims of functioning of the President Office and regional branches. Stocks and shares in partnerships purchased by the Agency for property included in the Stock and taken over by it as State Treasury property after the liquidation of State Agricultural Farms are subject to the obligation of being handed to the minister proper for handling Treasury issues. This minister also is obliged to prepare in the course of a regulation a list of companies preoccupied with cultivation of cultivated plants and breeding farm animals of a special importance for national economy, which rights resulting from shares and stocks were to be exercised by the Agency. However, sale of them had to be approved by the Cabinet.

The Act specifies also tasks of the Agency which result from the state policy. The scope of its competences includes the following activities:

- improvement and constitution of areal structure of family agricultural farms,

- establishing favourable conditions for rational utilisation of the manufacturing potential of the Stock of State Treasury,

- restructuring and privatisation of agriculturally used properties of the State Treasury,

- administering and traffic of real-estate properties and other components of the State Treasury, assigned for agricultural aims,

- preservation of the State Treasury property,

- initiating arrangement and agricultural works at State Treasury lands and supporting in the matter of organising private farms there.

The Agricultural Property Agency functions on the basis of the analysed act and the statute, which is set by a regulation of a minister responsible for rural development [17]. The Act includes also detailed rules of appointing Agency bodies, i.e. the President [18] and the Supervisory Board [19]. The supervision over Agency is exercised by the minister responsible for rural affairs. This minister is obliged to issue annual reports on the Agency activity to the Sejm of the Republic of Poland.

The above mentioned property of the State Treasury forms the Agricultural Property Stock of the State Treasury. On the day of the founding body’s decision about liquidating the State Agricultural Farms, it is struck off the register of national companies. Then, the Agency assigns a temporary property administrator and accepts liabilities and commitments, except for those due to the State Treasury. The decision about handing over the property to the Stock is made by a proper starost of a powiat where a real-estate property is located. The Act also regulates the issue concerning fees for perpetual usufruct of the Stock properties, used for particular aims and used by the Polish Academy of Sciences, higher education schools and research and development bodies.

As far as financial issues are concerned, the Agency runs a separate policy for itself and a separate for the Stock. Annual financial plans, prepared separately for the Agency and the Stock, are approved by the proper minister responsible for rural development, in agreement with the minister responsible for the State Treasury issues. By the means of a separate regulation, they determine detailed rules of the financial policy of the Agricultural Property Agency. Financial resources coming from the management of the Stock property are assigned for financing its tasks specified in the act. Any financial surplus is handed over to the state budget. The Agency is obliged to pay specified amounts from restructuring bonds to the state budget against decreasing its indebtedness. The Act specifies incomes and costs in the scope of the Agency’s financial management and separately these related with the Stock management. Upon consent of proper ministers, the Agency can cover deficiencies in its budget by incurring a credit, emission of own bonds, at which the Stock property can be their indemnity. The Agency is also obliged to adjourn the date of payment of charges, specified in the contract, spread payment into instalments or even to extinguish some part or the whole debt, provided that there are essential economical, social or aleatory considerations suggestive of it. These issues are in details determines

in regulations of the minister responsible for rural development.

The Agency administers the property of the Agricultural Property Stock of the State Treasury by the means of:

- sales of property in whole or some parts,
- put into use against payment for legal or natural persons for fixed term,
- contribute property or its part into the partnership,
- handing over an administrator for fixed term the whole or a part of the property for its management,
- handing over into management,
- exchange of a real-estate property.

The Agency can, free of charge, hand over particular land, devices and power supply, water supply, heat distribution and telecommunication networks to the benefit of national and municipal units. The Stock lands, assigned for constructing national roads, upon a decision of a governor become a subject of permanent management of the General Directorate for National Roads and Motorways. Upon an application of the minister responsible for rural development, in agreement with the minister responsible for economical affairs, the Agency President can gratuitously hand over lands included in the Stock for the ownership of an administrator of a special economic zone [20]. The Act amendments consider also issues related with handing over for an indefinite period of time into a permanent management of the minister responsible for sport and physical culture, properties indispensable for preparation and carrying out the UEFA Euro 2012 Championship. Such properties become then excluded from the Agricultural Property Stock of the State Treasury and taken over by a proper body responsible for the property stock of the State Treasury.

The Act also specifies rules concerning administration of the property excluded from the Stock, which consists in management of behalf of the Agency, on the basis of a written contract, including remuneration, components of the administered property, administrator's responsibilities, criteria for evaluation of its activity efficiency, the scope of liability and the period of such contract. An administrator can be a natural or a legal person.

Sales and purchases of real-estate properties of the Stock are run by the Agency or any other entity which is authorised for such activities. In case of selling the property, the Agency is obliged to announce in a particular place a specification of information on this property in 14 days before announcing a tender. The Act permits the possibility to sell an agricultural property provided that the total area of agricultural properties owned by a probable purchaser will not exceed 500 hectares after such purchase. The following entities are entitled for the buying preference from the Stock:

- a former owner of the property being sold or inheritors,
- an agricultural cooperative, which is actually managing a property being sold,

a tenant of a property being sold, provided that a tenancy lasted for at least three years,

an administrator of a special economic zone, in relation to properties located within premises of special economic zones.

In order to use the preferential purchase right, potential purchasers should meet specified conditions. It excludes some specifically determined by the Act real-estate properties, subject to regulations of other legal acts. The Agency is obliged to inform in a written form all previously mentioned persons, which are entitled to purchase priority, about the price and fixed dates of submitting purchase application according to rules specified in the notice. Properties that were not sold on the basis of these rules or those which are not subject to these regulations, are subject to sales in the course of a public tender, i.e. an auction. In economically justified cases, regulations enable also the possibility to select the purchaser in the course of an auction on closed bids or a tender contest. In case of equivalent offers, the priority is given to the person subject to regulations on agricultural social insurance and employees or a partnership of employees of the liquidated State Agricultural Farms, if they purchase a property in order to expand or establish an agricultural farm. If the priority is still available for several entities, there is a selection among them of the one who offers the best guarantee of proper running an agricultural activity. In case when a tender is not settled, the Agency can announce another one, reducing the price to the rate determined by proper regulations [21]. In case that a next one is not settled as well, the Agency is authorised to sale such property without a tender, at a price not lower than the starting price from the previous tender. The Agency has the right to introduce stringencies for person who may take part in tenders. These stringencies regard the following potential purchasers:

natural persons meeting requirements specified in regulations concerning constitution of the agricultural system, who intend to expand or establish a family agricultural farm, who are:

- farmers owning a farm in the commune at area of which the subject property is located and intending to expand it, or
- employees of the liquidated State Agricultural Farms who want to establish an agricultural farm, or
- farmers, who after the 31st December 1991 sold properties indispensable for public aims to the State Treasury, or
- members of agricultural cooperatives put into liquidation or bankruptcy,
- persons meeting requirements to fall into the programme of agricultural settlement,
- repatriation immigrants who stay in Poland for at least 6 years on the day of a tender,
- partnerships formed by employees of liquidated State Agricultural Farms.

In case when a property put up for a tender is related with providing workplaces in a commune regarded as endangered by a particularly high structural unemployment, among equivalent offers,

this purchaser is chosen who guarantees organisation and at least 5 years period of maintaining the highest possible amount of job posts. The Agency also has the first option to purchase or the option of redemption to the benefit of the State Treasury in case of a resale of a property within 5 years from its sale by the Agency [22]. The option of redemption does not concern properties located in special economic zones.

One important issue is setting the price of sold property. It can not be lower than the property value, resulting from the use of regulations on real-estate traffic. It can be also assessed using estimated rates per 1 hectare and 100 kg of rye. In such case, it can not be lower than the sum of land's value determined according to regulations on agricultural tax using this method and the values of components of this land, determined according to rules of the first method. This method is not used in relation to properties not assigned for agricultural or forestry aims in development plans. The price of a real-estate property which enlisted in the registry of historic monuments can be reduced, however, not more than by 50 %. It is possible to spread payment for properties purchased from the Agency into annual or semi-annual instalments, for the maximal period of 15 years,

provided that a purchaser paid at least 20% of set amount before concluding a sales contract. The regulations regard also matters regarding interest rate or its lack, in case when a sold property is located in a commune regarded as endangered by a particularly high structural unemployment, basing on employment and unemployment regulations. The Agency is also authorised to demand the repaying of the whole remaining dues in a set period, in case when a purchaser sells the previously purchased property in whole or in some part, before fully settling own commitment in respect to the Agency. Details in this scope, as well as a precise course of selling real-estate properties of the Stock, conditions of spreading payment into instalments and previously mentioned estimated rates per 1 hectare and the cost of 100 kg of rye are regulated by proper regulation of the minister responsible for rural development [23].

The Agency has the right to purchase real-estate properties to the benefit of the State Treasury if it arises from the need of realising its aims, especially those related with expanding already existing family farms [24]. The cost of such lands is set according to the rules used by the Agency in case of sales, adequately reduced by the amount of burden.

LITERATURE:

1. Agricultural system, as an element of a wider system, i.e. the political system of a state, is perceived in the agricultural law doctrine in two ways. In more narrow terms, it means an overall of property relations in agriculture. Such approach enables to use this term interchangeably with the concept of agrarian structure. In the broader sense, apart from property relationships in agriculture, it includes also forms of organisation of agricultural production and form of organisation of agricultural markets. cf. A. Stelmachowski, The subject and sources of agricultural law, [in:] P. Czechowski, M. Korzycka-Iwanow, S. Prutis, A. Stelmachowski, Polish agricultural law in the context of EU legislation, Warsaw 2002, p. 19.
2. Management of agricultural properties of the Treasury act of October 19th, 1991 (Journal of Laws 1991, no 107, item 464, as amended.).
3. Constitution of agricultural system act of 11th April 2003 (Journal of Laws 2003, no 64, item 592). ; the act came into force on the 16th July 2003.
4. cf. J. Babiak, Policy of constituting agricultural system in Poland, Faculty of Political Science and Journalism Publishing, Poznan 2010.
5. Management of agricultural properties of the Treasury act of October 19th, 1991 (Journal of Laws 1991, no 107, item 464, as amended.). The Act came into force on the 1st January 1992. The main legal document regulating the Agency activity was this act. Apart from it, rules of the Agency functioning were determined by: The Cabinet regulation of 21st January 1992 concerning rules and procedures of purchasing apartments included in the Agricultural Property Stock of the State Treasury (Journal of Laws 1992, no 12, item 42). Regulation of the Minister of Agriculture and Food Economy of 16th January 1992 on determining the detailed course of sales of real-estate and their components included in the Agricultural Property Stock of the State Treasury, condition of spreading sales cost into instalments and estimative rate for lands (Journal of Laws 1992, no 10, item 39). Regulation of the Minister of Agriculture and Food Economy of 15th January 1992 on the detailed course of handing over into management the property of the Agricultural Property Stock of the State Treasury. (Journal of Laws 1992, no 12, item 50). Regulation of the Prime Minister of 16th March 1992 on providing the Constitution of the Agricultural Property Stock of the State Treasury. (Journal of Laws 1992, no 24, item 104).
6. Możdżeń-Marcinkowski M., Agricultural Property Agency, Zakamycze Publishing, Zakamycze 2003.
7. Zieliński A., Reflections on privatisation of agriculture [in:] ed. by H. Olszewski, B. Popowska, Economy, administration, self-government, Poznan 1997, p. 572 FF
8. The Agency President was appointed by the Prime Minister upon application of the Minister of Agriculture and Food Economy and Minister of Ownership Transformations.
9. Forestry Act of 28th September 1991 (Journal of Laws 1991, no 101, item 444).
10. Report on the 1992 activity of the Agricultural Property Agency of the State Treasury, Agricultural Property Agency, Warsaw 1993, p. 3
11. Up to 1993, governors and the Minister of Agriculture and Food Economy made the decision to liquidate 1595 State Agricultural Farms. In case of 15 farms, the liquidation process started even before establishing the Agency, and next 38 of them were subject to separate bankruptcy processes.
12. Lichorowicz A., On the legal model of institutions constituting land structures in agriculture (a legal and comparative study), [in:] ed. by S. Prutis, „Studia Iuridica Agraria”, vol. V, Temida 2, Bialystok 2005.
13. cf. Prutis S., Constitution of agricultural system – the need of new legal regulation [in:] ed. by S. Prutis, „Studia Iuridica Agraria”, vol. V, Temida 2, Bialystok 2005.
14. cf. Kozłowska-Burdziak M., The Role of Agricultural Property Agency in arable land traffic, „Research Works of SGGW”, issue 38.
15. cf. Stefańska K., A family agricultural farm as an element of agricultural system, [in:] ed. by T. Kurowska, S. Prutis, «Studia Iuridica Agraria», vol. III, Temida 2, Bialystok 2002.
16. Szarliński W., Act realisation, «New Economic Life» issue from 24.05.2007.

17. Guidelines regarding the status itself are included in the act.
18. The Agency President is appointed, as well as recalled, upon an application of the minister responsible for rural development, by the Prime Minister, among persons associated in the national staff stock. The President manages the Agency and represents it. The Vice-President is appointed by the minister responsible for rural development and can be recalled by him upon an application of the Agency President.
19. The Supervisory is composed of the chairman and 11 members, who include representatives of the minister responsible for rural development, minister responsible for the State Treasury affairs, the minister responsible for public finances, minister responsible for economy affairs, the Agricultural Social Insurance Fund and a representative of various organisations and unions active in the field of agriculture. Its term of office is 3 years. The chairman and its members are appointed and recalled by the minister responsible for rural development. The main task of the Supervisory Board is a constant supervising the overall Agency activity. It evaluates the efficiency and conformity of ways of management of the State Treasury property with tasks resulting from the state policy. It is also responsible for evaluation of annual financial plans. It is preoccupied with studying and evaluating reports on the Agency activity and its financial reports. It is authorised to demand any information or explanations from the President and employees. It is also authorised to control documents. It takes resolutions in the scope of approving annual financial reports, as well as giving a receipt to the Agency President for executing responsibilities in the previous year. It presents its opinions to the minister responsible for rural development, who in agreement with the minister responsible for public finances, provides financial resources for the Agency activity.
20. Special economic zones act of 20th October 1994 (Journal of Laws 1994, no 123, item 600, as amended). By the end of 2010, the Agricultural Property Agency was also able to gratuitously hand over particular lands to State Forests, units of self-government, the Polish Academy of Sciences, agricultural chambers, the National Council of Agriculture Chambers, state higher education schools or a national research and development unit and unemployed persons without a right to collect benefit, provided that they meet particular requirements.
21. This price can not be lower than a half of the price determined according to rules specified in the Article 30. of the analysed Act.
22. cf. A. Lichorowicz, The issue of Constitution concordance of the legal right of repurchases by the Agricultural Property Agency, «Agricultural Law Review», issue 1(3)/2008. B. Ziemiński, The right of agricultural property repurchase: a daylight robbery, «Rzeczpospolita» – Legal guidebook, issue from 16.01.2008. T. Ciodyk, T. Zagórski, P. Iwaszkiewicz, Act on constituting agricultural system in practice, [in:] ed. by S. Prutis, B. Wierzbowski, «Studia Iuridica Agraria», vol. IV, Temida 2, Białystok 2005.
23. Regulation of the Minister of Agriculture and Rural Development of 19th November 2009 on detailed premises for adjournments, spreading into instalments or remission of dues of the Agricultural Property Agency and the procedure course in such cases. (Journal of Laws 2009, no 210, item 1619); Regulation of the Minister of Agriculture and Rural Development of 17th February 2010 on the detailed course of sales of real-estate and their components included in the Agricultural Property Stock of the State Treasury, condition of spreading sales cost into instalments and estimative rate for lands (Journal of Laws 2010, no 29, item 151); Regulation of the Minister of Agriculture and Rural Development of 5th February 2010 on the level of interest of adjourned or spread into instalments dues resulting from sales of the property of Agricultural Property Stock of the State Treasury and determining other than money measures of value of monetary dues. (Journal of Laws 2010, no 23, item 118).
24. cf. Lichorowicz A., Regulation of agricultural land traffic according to the constitution of agricultural system law of 11.04.2003, in the light of agrarian legislation of the Western Europe, [in:] Ed. by S. Prutis, B. Wierzbowski «Studia Iuridica Agraria», vol. IV, Temida 2, Białystok 2005.

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