PRZEGLĄD PRAWA ROLNEGO
NR 2 (35) – 2024, 145–161
e-ISSN 2719-7026, ISSN 1897-7626
DOI: 10.14746/ppr.2024.35.2.10

Dorota Łobos-Kotowska

University of Silesia in Katowice, Poland
e-mail: dorota.lobos-kotowska@us.edu.pl
ORCID: 0000-0003-4060-4071

Marek Stańko

Legal office, Katowice, Poland
e-mail: marek.stanko@kasip.pl
ORCID: 0000-0002-6085-6455

Selected aspects of the agricultural land lease under public law

Alcuni aspetti scelti di diritto pubblico in materia di affitto di terreni agricoli

The subject of the considerations is the public law aspects of a lease agreement of agricultural land, particularly the land from the Agricultural Property Stock of the State Treasury. These aspects emerge when the lessor is the National Support Centre for Agriculture and when the object of the lease is a state-owned land, and therefore the process of concluding the tenancy or lease agreement as well as some elements of its performance are based not only on private law but also on public law. The analysis is therefore concerned with those elements of the lease agreement which affect the position of the parties to the lease relationship, such as the process of selecting a potential lessee (tenant), the determination of rentals or the termination of the lease agreement. An important element of a land lease is the entitlement to direct payments that the lessee may collect, on the one hand, and the public burdens in the form of agricultural tax on the other. As shown in the conclusions, however, the public law provisions have been increasingly interfering in the leasehold relationships, which in consequence results in an excessive preference of a public entity in relation to the tenant.

Keywords: agricultural land lease, State Treasury Agricultural Property Stock, agricultural tax, direct payments

L'oggetto delle considerazioni sono gli aspetti di diritto pubblico in materia di contratto di affitto di terreni agricoli, in particolare di terreni del patrimonio agricolo della Tesoreria dello Stato. Gli aspetti in questione si manifestano sia dal punto di vista soggettivo, quando l'affittuario è il Centro nazionale di supporto all'agricoltura, sia dal punto di vista oggettivo, quando si tratta di terreni demaniali, mentre le attività finalizzate alla conclusione del contratto e alcuni elementi della sua attuazione si basano non solo sul diritto privato, ma anche sul diritto pubblico. Pertanto, l'analisi riguarda quegli elementi del contratto d'affitto che influenzano la posizione delle parti nel rapporto di affitto, vale a dire il processo di selezione di un candidato per un affittuario, la definizione dei canoni di affitto oppure la risoluzione del contratto di affitto. Importanti per la diffusione di questo tipo di contratto sono anche i di-

ritti all'assegnazione di pagamenti diretti che l'affittuario può riscuotere e gli oneri pubblici sotto forma di imposte. Nella parte conclusiva, gli Autori costatano che l'ingerenza delle disposizioni di diritto pubblico nei rapporti di affitto è in aumento. Ciò si traduce in privilegi eccessivi concessi all'ente pubblico rispetto all'agricoltore.

Parole chiave: affitto di terreni agricoli, patrimonio agricolo della Tesoreria dello Stato, imposte, pagamenti diretti

Introduction

Already at the outset it needs to be emphasised that agricultural land tenancy (agricultural lease) is one of the research fields to which Professor Aleksander Lichorowicz has devoted numerous scientific publications.[1] In view of this, the authors have therefore undertaken an extremely difficult and responsible task. Due to the framework of the study, a full analysis of all aspects of the lease agreement is not possible, so attention has been focused on selected public law aspects of this legal relationship.

The lease of agricultural land is currently an increasingly common legal, but also economic basis for the organisation of farms. This is already happening not only in Western European countries, where the share of agricultural land lease accounts for almost 50% of agricultural farmland, but also in Poland, where in the last several years there has been a visible increase in interest in tenancy as a form of running a farm, and not only as an instrument for increasing the acreage of land of a farm with an ownership structure. This is due to the growing popularity of a lease of land from the Agricultural Property Stock of the State Treasury, as well as a lease of "private" land.[2]

[1] A. Lichorowicz, *Dzierżawa gruntów rolnych w ustawodawstwach krajów zachodnioeuropejskich (studium prawnoporównawcze)*, Kraków 1986; idem, *Potrzeba prawnego uregulowania dzierżawy rolnej w Polsce (na podstawie doświadczeń krajów Unii Europejskiej)*, "Przegląd Prawa Rolnego" 2010, no. 2; idem, *Dzierżawa*, in: J. Panowicz-Lipska (ed.), *System prawa prywatnego*, vol. 8: *Prawo zobowiązań – część szczegółowa*, Warsaw 2004, pp. 201 et seq.; A. Lichorowicz, P. Blajer, *Dzierżawa gruntów rolnych*, in: P. Czechowski (ed.), *Prawo rolne*, Warsaw 2022, pp. 351 et seq.

[2] In the last century, tenancy was much less important and agricultural producers tended to "lease" agricultural land on farms based on the ownership structure. On the subject of lease and its importance for the organisation of farms in the last century, see inter alia W. Pańko, *Dzierżawa gruntów rolnych*, Warsaw 1975, and from more recent studies see A. Suchoń, *Dzierżawa jako popularna instytucja prawa prywatnego w rolnictwie – uwagi historyczne, stan obecny i perspektywy rozwoju*, "Studia Iuridica Agraria" 2018, vol. XVI, pp. 185 et seq.; eadem, *Z aktualnej problematyki dzierżawy nieruchomości rolnych*, "Przegląd Prawa Rolnego"

The public law aspects of agricultural tenancy are manifested both in terms of the subject matter – especially when the landlord is the National Agricultural Support Centre – but also in terms of the subject matter, when we are dealing with state-owned land, and the actions aimed at concluding the contract and some elements of its implementation are based not only on private law (the Civil Code), but also on public law, e.g. the procedure for selecting the tenant through a tender procedure.

From the subjective point of view, leasing of state land is still of primary importance, although private leasing of agricultural land with a public "element" is also becoming more common. This state of affairs was influenced by the suspension for ten years of the sale of real estate, its parts and shares in co-ownership of real estate forming part of the Agricultural Property Stock of the Treasury, which commenced upon the date of entry into force of the Act of 14 April 2016 on the suspension of sale of agricultural real estate of the Agricultural Property Stock of the Treasury and on the amendment of certain acts[3] and restrictions in the trade in agricultural real estate introduced by the Act of 11 April 2003 on shaping of the agricultural system.[4] The lack of possibility to own state land and the essentially limited possibility to acquire agricultural real estate from owners other than the National Support Centre for Agricultural resulted in the lease becoming the preferred form of land management. Moreover, the spread of agricultural land leasing was determined by its economic purpose since a lease agreement enables an agricultural producer to establish or expand an agricultural holding without having to commit capital to acquire ownership of agricultural land.

However, the subject of the considerations undertaken in the article is not a dogmatic analysis of the provisions on the lease of agricultural land, or an assessment of their adequacy to the changing socio-economic conditions. These issues have already been the subject of extensive analyses

2016, no. 1, pp. 49–64; eadem, *Prawna ochrona trwałości gospodarowania na dzierżawionych gruntach rolnych*, Poznań 2006.

[3] Act of 14 April 2016 on the suspension of the sale of agricultural real estate of the Agricultural Property Stock of the State Treasury and on the amendment of certain acts, Journal of Laws of 2016, item 585. Initially, the legislator reserved a 5-year period for the suspension of the sale of public real estate, and then extended this period to 10 years by the Act of 17 March 2021 on the amendment of the Act on the suspension of the sale of real estate of the Agricultural Property Stock of the State Treasury and on the amendment of certain acts, Journal of Laws of 2021, item 760.

[4] Act of 11 April 2003 on shaping of the agricultural system, consolidated text: Journal of Laws of 2024, item 423.

and can be omitted in this study. Instead, the authors focus on the public law aspects of the lease agreement and try to find them primarily in the legal position of the parties to the lease relationship. In the considerations carried out in this respect, the focus is primarily on the lease of agricultural land from the Agricultural Property Stock of the State Treasury. The second field of analysis is visible in the context of benefits in the form of direct payments, which the tenant may obtain by choosing tenancy as a legal title to agricultural land constituting a farm, and public law burdens in the form of agricultural tax, which the tenant is obliged to bear. These aspects also determine the attractiveness of the agricultural land lease agreement and its popularisation. The problem addressed in this article is relatively complex, as it lies at the interface between public law and private law, and private law spheres. On the one hand, it is necessary to take into account the private law nature of the lease agreement, on the other hand, it is necessary to take into account the interference of public law and public authorities in the lease trade, as well as the nature of payments and tax burdens and their unequivocal assignment by the doctrine and case law to the administrative-legal sphere.[5] This forces a detailed analysis of the lease provisions using different terminological scopes to assess the appropriateness of the constructions used in the civil and administrative-legal context.

The aim of the article is to assess the regulations governing tenancy relations, with particular emphasis on the specific nature of treasury agricultural land tenancy agreements, as well as the regulations governing the tax burden on the farmer and the financing of agriculture from public funds. This assessment should take into account the significance of these regulations for the implementation of the state's agricultural policy objectives and the public law nature of the interference of public regulations in lease relations. A question of fundamental importance is connected with the thus defined aim of the article, namely whether the hitherto solutions in the sphere of agricultural land tenancy, which can be found in an extremely limited scope in the Civil Code,[6]

[5] Both by doctrine and jurisprudence, see: J. Bieluk, D. Łobos-Kotowska, *Ustawa o płatnościach w ramach systemów wsparcia bezpośredniego. Komentarz*, Warsaw 2008 and the literature and case law indicated therein; J. Bieluk, *Charakter prawny płatności w systemie wsparcia bezpośredniego*, in: B. Jeżyńska (ed.), *Obrót gospodarczy w prawie rolnym*, Lublin 2009, pp. 205–218, and the literature and case law indicated therein and case law indicated therein.

[6] Cf. Articles 704, 706 and 708 of the Act of 23 April 1964 – Civil Code, consolidated text: Journal of Laws of 2023, item 1610, as amended (hereinafter: Civil Code).

or scattered in special laws,[7] are sufficient for the proper shaping of this legal relation, or whether it is necessary to create a modern model of tenancy, corresponding to the needs of modern agricultural economy.

The answer to the question posed this way obviously goes beyond the framework of this article, so we will only try to indicate selected issues and signal the need for changes in the legal regulation of agricultural lease in a broad sense.

1. The importance of a lease agreement in agricultural real estate trading

The thesis formulated in this way raises another question about the location of an agricultural lease not only in the system of agricultural law, but in a much broader aspect as civilisation. A consequence of the formulated thesis is also a question about the reasons, why in the Polish civil code the agricultural lease has been formulated very narrowly, omitting many regulations that determine the specificity of this type of contractual relation. Such an approach to the issue is possible if we refer to the scientific output of Professor Aleksander Lichorowicz who approached the problem most emphatically, referring in this matter to the historical realities of work on the Civil Code, stating that: "this work took place at the turn of the 1950s, at a time when the prevailing view was that collectivisation of agriculture would take place in the near future, the institution of tenancy in agriculture would lose all meaning, and therefore it was pointless to introduce an extensive regulation of agricultural tenancies into the Civil Code."[8] Unfortunately, the "legacy" seems to continue to influence the legislative work and, in particular, work related to the development of a modern agricultural lease model.[9]

---

[7] Cf. the already cited Act on Formation of the Agricultural System, but also Chapter 8 of the Act of 19 October 1991 on Management of Agricultural Property of the State Treasury, consolidated text: Journal of Laws of 2024, item 589. A reference to the construction of a lease also appears in Article 28(4)(1) of the Act of 20 December 1990 on social insurance of farmers, consolidated text: Journal of Laws of 2024, item 90.

[8] A. Lichorowicz, *Dzierżawa gruntów rolnych*, in: A. Stelmachowski (ed.), *Prawo rolne*, Warsaw 2009, p. 191.

[9] The preparation of a law on agricultural tenancy is a priority for the Minister of Agriculture and Rural Development, and announcements of its enactment have appeared in the media space. In 2015 a draft law on agricultural tenancy was debated in the parliament but was eventually not passed, parliamentary print No. 3231. It envisaged the adoption of two separate legal regimes for short-term tenancy (6 months to 5 years) and a long-term tenancy (5–30 years); the introduction of a long-term tenancy giving the tenant the possibility of freer

Referring to the public law aspects of agricultural tenancy, but not losing sight of its private law positioning either, it must be emphasised that the basic factor that gave rise to the need for changes in the perception of agricultural tenancy which had been earlier seen merely as a form of use of the farm deriving from ownership which, at the same time guaranteed the owner's monopolistic position, was the gradual abandonment of the ownership criterion in the very content of the concept of an agricultural holding, as well as the emergence in most Western European countries of the concept of an agricultural enterprise, operating regardless of who owned the means of production, including land. As a consequence, a lease agreement now is seen as an institution designed first and foremost to serve the efficient operation of a farm (enterprise) and secondarily to protect the interests of the lessor.

In the considerations, the point of reference must of course be the comparative research conducted by Professor Aleksander Lichorowicz, which shows the basic directions of evolution of the agricultural lease model in Western European countries, and, consequently, allows to outline the directions of evolution of the lease in the Polish system. The most important ones include:

– protection of rents through the abolition of half rents and an attempt to define the maximum amount of rent; (the latter issue plays a special role when land is leased from the Agricultural Property Stock of the Treasury),

– the statutory provision of a minimum duration of agricultural leases and the related to it restriction of arbitrary shortening of the lease agreement by the landlord (lessor), by introducing a statutory closed catalogue of grounds for termination of the lease relationship, which is also not insignificant in the case of treasury land leases,

– providing the tenant with greater freedom to carry out agricultural activities on the leased land and greater freedom to make investments of a productive nature without the landlord's consent,

– development of the institution of the right of first refusal of leased land.[10]

The directions formulated in this way for the evolution of the agricultural tenancy model in comparative law terms must also be reflected in the shaping of public law solutions relating to agricultural tenancy, which, as we point out, is rooted in private law.

---

production activities on the leased land and, in addition, granting the long-term tenant legal protection against third parties to the extent to which that the owner is entitled.

[10] A. Lichorowicz, *Dzierżawa gruntów rolnych*, p. 188.

2. Public law elements in Agricultural Property Stock of the State Treasury lease agreements

Before moving on to the basic aspect of agricultural tenancy in public law terms, i.e. examining the relationship between the legal construction of tenancy and payment entitlements, it seems necessary to outline the basic legal conditions for leasing agricultural land from the Agricultural Property Stock of the State Treasury.

It should be emphasised that the growing importance of tenancy in Poland was undoubtedly prompted by the activity of the Agricultural Property Agency.[11] However, in the absence of a comprehensive legal regulation of agricultural tenancy, it was the Agency that introduced its own standards for regulating legal relations between the lessor and the tenant, usually the weaker party of this legal relationship. Although contracts are concluded in writing and contain specific legal rigours and the amount of the lease rent, it is still possible to terminate them in many cases, even when they are concluded for a fixed period.[12]

From the systemic point of view, property constituting the Treasury Agricultural Property Stock consists of agricultural real estate within the meaning of the Civil Code, with the exclusion of land under the management of the State Forests and national parks, as well as other agricultural real estate and property components remaining after the liquidation of state agricultural management enterprises and their unions and associations, as well as forests not separated from the real estate indicated above. In terms of the subject matter, the principles of management include property that remained under the management of state organisational units, but also in the use of natural and legal persons, or in the use or *de facto* possession of natural persons, legal persons and other organisational units. A separate legal category, which became part of the Resource, is the real estate of the former State Land Fund. The Agricultural Property Agency, currently known as the National Support Centre for Agriculture (KOWR), also manages agricultural property which is taken over for the ownership of the Treasury pursuant to administrative decisions or other titles, also of civil

[11] Currently, the National Centre for Agricultural Support. Cf. the Act of 10 February 2017 on the National Centre for Agricultural Support, consolidated text: Journal of Laws of 2024, item 700.

[12] S. Jarka, *Znaczenie dzierżawy gruntów rolnych w Polsce*, "Zeszyty Naukowe Szkoły Głównej Gospodarstwa Wiejskiego. Ekonomika i Organizacja Gospodarki Żywnościowej" 2010, no. 84, p. 49.

law nature (e.g. inheritance).[13] Determination of property, including real estate, which is currently managed by the Agency shows the scale of Treasury agricultural property and allows for the conclusion that the State Treasury still remains the largest owner of agricultural land in Poland.[14]

It should be emphasised here that originally the Agricultural Property Agency of the Treasury was intended to act as an administrative body which would effectively carry out privatisation of state agricultural property. It is not the subject of this article to analyse the reasons why that process was not completed as originally envisaged; however, from the point of view of our interest, it is of importance that in view of the suspension of the privatisation process, a significant portion of real property comprising the Agricultural Property Stock has become the subject of lease. In the current wording of Article 24(1)(1) of the Act, the basic way to develop property from the Stock is to lease or sell it for the purpose of enlarging or creating family farms. Thus, it is clear that the leasing of Treasury agricultural property was aimed at achieving a specific objective – the creation or enlargement of an existing family farm. This, however, has brought about the question whether the legal construction of agricultural lease envisaged in the Act on the Management of Agricultural Property of the Treasury makes it possible to achieve this objective.

The basic model of a lease is set out in Article 38(1)(1) of the Act, according to which property forming part of the Stock may be leased or rented to natural or legal persons, under the terms of the Civil Code.[15] The legislator has also provided in Article 38a for a qualified model of agricultural lease, i.e. lease with an assurance to the lessee of the right to purchase the object of lease at the latest at the end of the period for which the lease contract was concluded.[16] A detailed analysis of all aspects of an agricultural lease is unnecessary in this article, and attention will be focused only on the "public" elements of this lease.

---

[13] Article 12 in connection with Articles 1 and 2 of the Act of 19 October 1991 on the management of agricultural properties of the State Treasury, consolidated text: Journal of Laws of 2024, item 589.

[14] According to KOWR data, by 31 December 2023, a total of 4,759,778 ha of land had been taken over by the Treasury Agricultural Property Stock, of which 3,424,071 ha has been permanently disposed of, https://www.gov.pl/web/kowr/gospodarowanie-zasobem [accessed on 22.09.2024].

[15] We leave out of the scope of our considerations the leasing of property from the stock and, moreover, we limit our interest to the leasing of agricultural property (agricultural land), omitting the entire production complexes that make up agricultural property.

[16] This latter legal construction is commonly, albeit erroneously, referred to as an "agricultural lease."

In the basic model, the leasing of real estate is to take place in accordance with the provisions of the Civil Code, or more specifically, its Articles 693 and the next ones, subsequently amended by the Act on the Management of Agricultural Property of the Treasury.

It should be noted that Article 38(1)(1) of the Act provides for the possibility of leasing real estate from the Stock also by legal persons, not only natural persons, which contradicts the statutorily declared purpose of a lease intended for the creation or enlargement of family farms. There is no doubt that family farms in Poland are not run by legal persons, but only by natural persons who additionally are also qualified as individual farmers. The extension of the powers of the KOWR in this regard therefore finds no justification and must be assessed critically.

The public aspect of the lease of agricultural real estate (agricultural land) from the Stock manifests itself primarily in the selection of a candidate tenant by tender. Pursuant to the provision of Article 39(1) of the Act, the tender may take the form of a written tender or a public oral tender. This principle suffers a number of limitations under Article 39(2) of the Act, which provides for a non-tendered procedure for the conclusion of a lease agreement. In this respect, the public aspect of agricultural lease also manifests itself because by selecting a candidate for a tenant under this procedure KOWR as the National Agricultural Property Fund should fulfil the public tasks entrusted to it by law. As it is difficult to analyse all cases where the tender procedure can be waived, selected examples will be presented.

Given the necessity postulated by Professor Aleksander Lichorowicz to ensure the tenant's permanence in the lease relationship, it should be pointed out that the Act largely fulfils this postulate, as it first allows for the non-tender procedure in a situation where the previous tenant submits to KOWR a declaration of its intention to continue to lease the real estate on new terms agreed with KOWR. The detailed provisions governing the "extension" of the lease agreement on "new" terms are contained in Article 49(4) to (6) of the Act. However, it is worth emphasising that it is KOWR that actually decides on the new terms of the agreement, in particular the change of the rent rate, and failure to accept these terms results in the property becoming subjected for lease by tender. Therefore, there is no doubt that in public law terms, the lessee, unlike under the Code regulation, remains the weaker party to this legal relationship.

The position of the lessee is also weakened under Article 39(5) of the Act, which allows KOWR to terminate the lease agreement, also one concluded for a fixed term, in order to exclude from the lease a part or the whole of

the real estate found necessary for public purposes within the meaning of the provisions of the Act of 21 August 1997 on real estate management.[17] Termination of the lease agreement concerning a part of the real estate entails a corresponding reduction of the rent. The reference to Article 704 of the Civil Code only relates to the time limits for the termination of such an agreement, but it does not in any way protect the tenant, especially when he or she has established a family farm on the leased land or the lease has served to expand an existing family farm. This solution is to be criticised, especially as it also applies to a tenant who has concluded a contract with the assurance of the right to purchase the leased property. It must me emphasised that the legal instrument provided for in Article 39a of the Act on the protection of family holdings under lease, supposed to be a model for the selection of a "proven" candidate for the purchase of an agricultural land from the Treasury Stock, has become illusory.

It should be added that in relation to the tenant with whom the contract was concluded with the assurance of the right to purchase the object of the lease, the amount of rent is determined differently than in relation to the "ordinary" tenant. Indeed, pursuant to Article 38a(2) of the Act, the rent is derived from the value of the leased object and is paid as an annual rent in an amount equal to the sum of the value of the leased object divided by the number of years for which the contract was concluded and the interest on the unpaid portion of that value. Consequently, in a contract for the sale of a leased property, the price shall be set as the sum of the value of the leased property and the interest payable for the period up to the date of conclusion of that contract, with a credit against the price for the rent paid, which, what needs to be noted, is significantly higher than in the case of an 'ordinary' lease. Thus, if KOWR terminates the lease-purchase agreement, this rent is not subject to any settlement, which is an extremely unfavourable solution for the tenant.

Doubts have also been raised in the doctrine in relation to the very construction of the lease agreement with the provision of the tenant's right to purchase the leased property[18] and therefore it does not seem purposeful to repeat them. It is only noteworthy that the construction of the agreement

[17] Act of 21 August 1997 on real estate management, consolidated text: Journal of Laws of 2024, item 1145, 1222.

[18] M. Stańko, *Podstawowe założenia konstrukcyjne "dzierżawy rolniczej" w świetle art. 38a ustawy o gospodarowaniu nieruchomościami rolnymi Skarbu Państwa*, in: E. Drozd, A. Oleszko, M. Pazdan (eds.), *Rozprawy z prawa prywatnego, prawa o notariacie i prawa europejskiego*, Kluczbork 2007, pp. 321 et seq.

under Article 38a of the Act on the Management of Agricultural Property of the State Treasury shows far-reaching differences from the lease agreement drawn under the provisions of the Civil Code. Without going into detailed considerations, first of all it should be pointed out that in an agreement drawn pursuant to Article 38a there is no classic relationship characteristic of a leasing agreement, i.e. under such an agreement a buyer, within the scope of its business activity, undertakes to purchase a thing from a designated seller under the terms and conditions specified in the agreement and to transfer that thing to the lessee (tenant) for use and collection of benefits thereof for a specified period of time. Only in such a case, under such terms and conditions, there occurs a lease. However, if an agreement, and in this case the agreement with a purchase option concluded pursuant to Article 38a of the Act on the Management of Agricultural Property of the Treasury only slightly differs from the lease model agreement envisaged by the Civil Code then, despite some discrepancies, there are no obstacles as M. Pazdan emphasizes, to apply to it the provisions regulating lease.[19]

And yet, due to the defectively regulated rent, the legal, but also economic situation of the tenant in either type of the agreement is not favourable, which must be assessed critically from the point of view of the protection of the family farm.

Of course, in addition to the legal situation of the tenant as outlined above, it should be emphasised that the public aspects of agricultural tenancy also dominate in the case of rent determination. In the case of "ordinary" lease of agricultural real estate (agricultural land) from the Stock, the principles of determining the rent are regulated in detail in Article 39a (2)–(8) of the Act. It should be emphasised that in addition to the rent in the contract set as a monetary sum, there has also been retained the possibility of setting the amount of the rent as a monetary equivalent of the relevant quantity of wheat. What is more, the change in the amount of the rent is not agreed by way of negotiations between the parties, but using a rigid valorisation clause based on the indices of change in the purchase prices of the basic prices of agricultural products in the six months preceding the payment date, or based on the average purchase price of wheat for eleven quarters preceding the six months of the calendar year in which the rent falls due. Such a method of determining the rent ignores the individual situation of the tenant and puts the lessor in a privileged position, especially since a refusal to adopt the terms gives the landlord the possibility of terminating the contract. It should

[19] M. Pazdan, *Kodeksowe unormowanie leasingu*, "Rejent" 2002, no. 5.

also be added that under Article 39a(8), correction mechanisms allowing the adjustment of the rent to the productive potential of the object of the lease, depending in particular on the type and class of land and its location, the book value of the buildings and structures, and the nature of the economic activity that can be carried out, also remain on the 'public' side. This is because these mechanisms may be introduced by a decree of the minister competent for rural development, after consultation with the Director General of KOWR. Consequently, it is the lessor or his representative who can influence the amount of the lease rent.

The examples presented here allow one to conclude that the presence of the public aspect in lease contracts introduces an inequality between the parties to this legal relationship, and this must be assessed critically. This inequality might, of course, be accepted if the aim of the "public" party was the protection of the family farm provided for in the Act, which unfortunately, is not the case.

3. Leasing in relation to financial support instruments and agricultural taxation

The public law aspects in terms of the subject matter of a land lease manifest themselves particularly when it comes to determining the legal basis of the entitlement to payments due to the tenant of agricultural land. The provisions of the Act of 8 February 2023 on the Strategic Plan for the Common Agricultural Policy for 2023–2027[20] unambiguously resolve the entitlement of a tenant of agricultural land to direct payments. Indeed, Article 22 of the aforementioned law stipulates that if the condition for granting aid is the possession of land, aid shall be granted to land which on 31 May of the year of submission of the application has been in the possession of the applicant, holder of a legal title to that land. The law also resolves the competition of payment entitlements between the sole holder and the dependent holder in favour of the latter. Thus, it is the tenant who is the entity entitled to receive payments.

It is the legal title to an agricultural land held, which in fact determines the meeting of the condition of an entitlement to payment. However, the Act on the CAP Strategic Plan does not formulate the requirement that the lease agreement must constitute an annex to the payment application. What is more,

[20] Act of 8 February 2023 on the Strategic Plan for the Common Agricultural Policy for 2023–2027, consolidated text: Journal of Laws of 2024, item 261 (hereafter: CSP).

the provisions of the Civil Code do not, in principle, formulate any restrictions as to the form of the lease agreement, indicating only that a lease agreement concluded for a period longer than one year should be made in writing, and if this form is not observed, the agreement is deemed to have been concluded for an indefinite period (Article 660 in connection with Article 694 of the Civil Code). Such a state of legislation results in the fact that while deciding on the on entitlement to payments, the Agency for the Restructuring and Modernisation of Agriculture does not examine who actually carries out agricultural activity on the land and maintains it in a condition suitable for cultivation or grazing in accordance with approved standards. Indeed, the issue of the legality of possession is decided by the ordinary courts. This means, in practice, that it is not always the tenant – the subject of the statutory payment entitlement – who acquires the entitlement, while the landowner applies for payments. This distorts the objective of the EU legislator that direct payments should be the basic income support for active farmers engaged in agricultural activities.

Indeed, fulfilment of the condition of title-based possession is only the starting point for assessing whether payments are due to the farmer applying for them. The law on CSP does not define possession, and taking into account the principle of unity of the legal system, this concept should be referred to possession within the meaning of the Civil Code.[21] The concepts from the sphere of private law have been used to define the prerequisites for the acquisition of entitlement to payments, despite the fact that direct payments belong to the sphere of public law. Therefore, a deeper reflection on the meaning of the institution of possession is necessary and when determining it, additional prerequisites for obtaining payments should be taken into account. On the grounds of the CSP, they give possession a meaning different from that understood under civil law one, in particular, they impose further obligations on the tenant related to the use of agricultural land.[22]

---

[21] Judgment of the Supreme Administrative Court of 14 June 2007, II GSK 53/07, LEX no. 338442.

[22] J. Bieluk, D. Łobos-Kotowska, *Posiadanie gruntów rolnych jako warunek nabycia prawa do płatności bezpośrednich*, "Studia Iuridica Agraria" 2009, vol. VIII, pp. 137–149; D. Łobos-Kotowska, *Problematyka wykładni wybranych pojęć w świetle ustawy z dnia 26 stycznia 2007 r. o płatnościach w ramach systemów wsparcia bezpośredniego*, in: J. Glumińska-Pawlic, Z. Tobor (eds.), *Prawnicze dylematy interpretacyjne*, Toruń 2011, pp. 131–142; the case law of administrative courts, cf. judgment of 25 November 2022, III SA/Po 616/22, LEX No 3447487, judgment of the Regional Administrative Court in Szczecin of 8 April 2021, ISA/Sz 103/21, LEX No 3176458.

The legal situation of the lessee of treasury land is different. In this case, contracts are concluded in writing with the use of a model contract prepared by KOWR, although this is not a statutory requirement. Moreover, it should be noted that KOWR is not an entitled person to receive direct payments, as an entitled person is a farmer within the meaning of Article 3(1) of Regulation 2021/2115 whose holding is located on the territory of the Republic of Poland. Hence there is a guarantee that a lessee of land from KOWR will receive the direct payments due.

Also with regard to the taxation of agricultural land with agricultural tax, the provisions of the Agricultural Tax Act of 15 November 1984[23] treat the lessee differently depending on whether the object of the lease is private land or land of the State Treasury or local government units. Pursuant to Article 3 of the Agricultural Tax Act, the owner, the perpetual usufructuary as well as the spontaneous possessor of agricultural land are persons liable for tax. The legislator also qualifies as an agricultural taxpayer an entity that is a dependent holder (lessee). In this case, however, the scope of the notion of taxpayer has been limited, as it applies only to holders of land leased from the State Treasury or a local government unit. This means that a lessee of land from the Agricultural Property Stock of the State Treasury is subject to agricultural tax.

With regard to the leasing of private land, however, the lessee is subject to agricultural tax in only two cases: when all or part of the land of an agricultural holding is leased pursuant to a contract drawn under the provisions of the Agricultural Social Security Act (Article 28(4)(1)), or under the provisions of the Structural Pensions Act (Article 7).[24]

Thus, also with regard to the financial aspects of the lease contract, there is inconsistency in the legal regulation of land lease. Taxation, in addition to fulfilling its fiscal function, should be a stimulus for the development of agriculture in order to create the desired lease model. However, the claim that lease is the preferred form of management of agricultural property of the Treasury for the purpose of establishing or enlarging a family farm is not supported by differentiated treatment in terms of agricultural tax of leaseholders of private land and those leasing land from the Agricultural Property Stock of the State Treasury.

[23] Agricultural Tax Act of 15 November 1984, consolidated text: Journal of Laws of 2020, item 333 as amended.

[24] L. Etel, B. Pahl, M. Popławski, *Podatek rolny. Komentarz*, Warsaw 2020, p. 82 et seq.; P. Borszowski, K. Stelmaszczyk, *Komentarz do ustawy o podatku rolnym*, in: eidem, *Podatki i opłaty lokalne. Podatek rolny. Podatek leśny. Komentarz*, Warsaw 2016, p. 136 et seq.

Summary

Contracts for the lease of agricultural land, and in particular land from the Agricultural Property Stock of the State Treasury, are the source of a specific obligatory relationship where the predominant civil law elements are combined with elements of an administrative law nature. Undeniably, these contracts have a special character as they consist in the implementation of the public interest in the process of public property management. This, however, should be done while respecting the interests of the lessees, the weaker party to the legal relationship, who must be assured an appropriate level of legal protection.

The analysis of the public-legal aspects of the lease of agricultural land shows that a body performing the functions of public administration (here: KOWR) is excessively privileged compared to the other party to the contract, and as such may create the legal situation. This is particularly evident in the process of selecting a candidate for a tenant, shaping lease rents (also in lease agreements with an assurance of the right to purchase the subject of the lease), or terminating a lease agreement also concluded for a fixed period in order to exclude from the lease a part or all of the real estate needed for public purposes. The preserved, formal equivalence of the subjects of the lease relationship is not reflected in the substantive legal position of the parties to the contract, which, however, does not affect the unequivocally private-law character of the lease contract, including the one concluded with the Agricultural Property Stock of the State Treasury.

A separate issue, however, is the consequences of the conclusion of a civil lease contract for financial support instruments such as direct payments or agricultural taxation. Here, too, the regulations lack a clear concept of the objectives desired to be achieved. In particular, there is a lack of legal instruments that would, as it were, "seal" the system of granting payments and ensure that all tenants who actually use the land are entitled to payments.

In terms of property taxation, on the other hand, it is necessary to formally equalise the legal position of tenants of public and private land.

To sum up, there is an apparent trend towards a systematic increase in the interference of public law provisions in lease relationships. The provisions on the lease of land from the Agricultural Property Stock of the State Treasury are an example of interference in the sphere of obligatory rights. This gives rise to concerns about the excessive preference of the public entity in relation to the farmer. Indeed, the realisation of the public interest and the constitutional protection of family farms do not appear to be sufficient justi-

fication for the weakening of the legal position of the lessee. In combination with the lack of a clear concept as to the instruments of public-legal support of farmers and their burden of agricultural tax, it leads to the fundamental postulate to formulate a model of agricultural land leasing. This, however, cannot be done in isolation from the determination of the consequences in the public-law sphere of the concluded lease agreements.

BIBLIOGRAPHY

Bieluk J. (2009) *Charakter prawny płatności w systemie wsparcia bezpośredniego*, in: B. Jeżyńska (ed.), *Obrót gospodarczy w prawie rolnym*, Lublin.

Bieluk J., Łobos-Kotowska D. (2008), *Ustawa o płatnościach w ramach systemów wsparcia bezpośredniego. Commentary*, Warsaw.

Bieluk J., Łobos-Kotowska D. (2009), *Posiadanie gruntów rolnych jako warunek nabycia prawa do płatności bezpośrednich*, "Studia Iuridica Agraria" vol. VIII.

Borszowski P., Stelmaszczyk K. (2016), *Komentarz do ustawy o podatku rolnym*, in: P. Borszowski, K. Stelmaszczyk, *Podatki i opłaty lokalne. Podatek rolny. Podatek leśny. Komentarz*, Warsaw.

Etel L., Pahl B., Popławski M. (2020), *Podatek rolny. Komentarz*, Warsaw.

Jarka S. (2010), *Znaczenie dzierżawy gruntów rolnych w Polsce*, "Zeszyty Naukowe Szkoły Głównej Gospodarstwa Wiejskiego. Ekonomika i Organizacja Gospodarki Żywnościowej" no. 84.

Lichorowicz A. (1986), *Dzierżawa gruntów rolnych w ustawodawstwach krajów zachodnioeuropejskich (studium prawnoporównawcze)*, Kraków.

Lichorowicz A. (2004), *Dzierżawa*, in: J. Panowicz-Lipska (ed.), *System prawa prywatnego,* vol. 8: *Prawo zobowiązań – część szczegółowa*, Warsaw.

Lichorowicz A. (2009), *Dzierżawa gruntów rolnych*, in: A. Stelmachowski (ed.), *Prawo rolne*, Warsaw.

Lichorowicz A. (2010), *Potrzeba prawny uregulowania dzierżawy rolnej w Polsce (na podstawie doświadczeń krajów Unii Europejskiej)*, "Przegląd Prawa Rolnego" no. 2.

Lichorowicz A., Blajer P. (2022), *Dzierżawa gruntów rolnych*, in: P. Czechowski (ed.), *Prawo rolne*, Warsaw.

Łobos-Kotowska D. (2011), *Problematyka wykładni wybranych pojęć w świetle ustawy z dnia 26 stycznia 2007 r. o płatnościach w ramach systemów wsparcia bezpośredniego*, in: J. Glumińska-Pawlic, Z. Tobor (eds.), *Prawnicze dylematy interpretacyjne*, Toruń.

Pańko W. (1975), *Dzierżawa gruntów rolnych*, Warsaw.

Pazdan M. (2002), *Kodeksowe unormowanie leasingu*, "Rejent" no. 5.

Stańko M. (2007), *Podstawowe założenia konstrukcyjne „dzierżawy rolniczej" w świetle art. 38a ustawy o gospodarowaniu nieruchomościami rolnymi Skarbu Państwa*, in: E. Drozd, A. Oleszko, M. Pazdan (eds.), *Rozprawy z prawa prywatnego, prawa o notariacie i prawa europejskiego*, Kluczbork.

Suchoń A. (2006), *Prawna ochrona trwałości gospodarowania na dzierżawionych gruntach rolnych*, Poznań.

Suchoń A. (2016), *Z aktualnej problematyki dzierżawy nieruchomości rolnych*, "Przegląd Prawa Rolnego" no. 1.
Suchoń A. (2018), *Dzierżawa jako popularna instytucja prawa prywatnego w rolnictwie – uwagi historyczne, stan obecny i perspektywy rozwoju*, "Studia Iuridica Agraria" vol. XVI.