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**Topic: Legal construction of restrictions on the disposal of agricultural real estate**

## Abstract

The right of ownership is the broadest property right, granting the owner the largest catalogue of rights with respect to things. Within the limits set by statutes and principles of social co-existence, the owner may, to the exclusion of others, use the thing in accordance with the social and economic purpose of this right and collect benefits from the thing. Within the same limits, he may dispose of the thing. Within the scope of disposal, the owner may, inter alia, encumber or dispose of the thing. The introduction of limitations in the disposal of agricultural real estate therefore infringes the basic ownership right, i.e. the right to dispose of the object of ownership.

The Act of 11 April 2003 on shaping the agricultural system is treated as a legal act of a regulatory nature. From the very beginning of its existence, it contained legal regulations limiting the trade in agricultural real estate. The considerations included in this dissertation are conducted from the perspective of the Act on shaping the agricultural system as a legal act that regulates issues of fundamental importance and is intended to realise the values resulting from the from the Constitution of the Republic of Poland, in particular those concerning family farms and their development. It is the result of the obligation imposed on the legislator to realise the constitutional principle that the basis of the agricultural system of the Republic of Poland is the family agricultural holding. By definition, the Act comprehensively treats agricultural issues concerning the shaping of agricultural real estate turnover with regard to area and support for development of agricultural holdings of a specific area. Agriculture currently performs many functions, but the most important of these is the provision of agricultural produce. For this reason, there is increasing public acceptance of the legislative differences concerning this sector of the economy . Historical, social and economic conditions are also important for the shape of current regulations. The concrete course of the history of our country has made the desire to protect Polish agricultural land very strong and has not changed over the years. Due to the above circumstances, it is sufficient to limit the research to the Polish legal order, with a comparison

of the history of legislative changes over the century and a comparison of Polish legislation to that of the European Union, with which the national law should comply. The need to undertake research has a practical justification related to the process of creating and applying the law. The introduction of legal instruments regulating the disposal of agricultural real estate justifies the issue of their normative construction. There is a need not only to discuss the restrictions in detail, to place them in the content of the property right, but also to assess them in terms of their usefulness for the purposes postulated by the legislator.

In considering the restrictions on the disposal of agricultural real estate, a review of legal acts concerning agricultural real estate and farms since the interwar period was made. It was a special time, as after the partitions, which lasted more than a century, it was necessary not only to rebuild, but also to integrate and unify the parts of the reborn state that differed from each other in many aspects. Therefore, after Poland regained independence, a strong emphasis was placed above all on securing the regained lands. The first legal act containing provisions regulating the acquisition of real estate, including agricultural real estate, was the Act of 24 March 1920 on the Acquisition of Real Estate by Foreigners . This act is still in force today. In the inter-war period, attempts were made to carry out land reform, but they were not successful. After the Second World War, these intentions were continued. Regulations on the inheritance of agricultural holdings and their division were also introduced, which were initially very restrictive and then gradually relaxed. Acts introducing area standards and limiting the division of farms were also adopted into the legal order . These solutions were aimed at increasing the productivity of farms and thus ensuring access to food for all citizens. They also sought to ensure that farm work would provide a livelihood for the farmer and his family. On the other hand, the legislation at that time created many opportunities for agricultural property to pass to the State. In the 1990s and in the first years of the present century, there was a period of relaxation with regard to the disposal and acquisition of agricultural property. This state of affairs lasted until the enactment of the Act on agricultural property. Its adoption coincided with Poland's accession to the European Union, which is not a coincidence. Already in 1991, the Europe Agreement was signed in Brussels, which established an association between the Republic of Poland and the European Communities and their Member States . By virtue of this agreement, Poland's legal system was to be brought into line with Community legislation, which was to include agriculture. This was the first stage of integration. The second began on the day of accession to the European Union . Therefore, on the eve of Poland's accession to the EU, the u.k.u.r. entered into force. As a result of Poland's accession to the EU, Poland started to be bound by Community-wide rules, such as the principle of national treatment of entities from

EU countries. It is linked to the principle of non-discrimination and consists in the fact that the authorities of a given state are obliged to treat entities of other member states - both natural and legal persons - as entities of that state. It should be mentioned that accession also necessitated an amendment to the Act on the Acquisition of Real Estate by Foreigners by excluding its application to nationals of states party to the Agreement on the European Economic Area or the Swiss Confederation. Admittedly, for the first twelve years there was a protective period for the acquisition of agricultural real estate by these foreigners, which expired on 1 May 2016. Initially, the restrictions imposed on these entities therefore had a double dimension. Consequently, it was feared that with Poland's accession to the EU, and then with the expiry of the protection period, Polish citizens with the ability to dispose of real estate to citizens of other Member States would dispose of their properties. It was therefore feared that there would be an excessive purchase of real estate by foreign entities. In April 2016, literally on the eve of the expiry of the twelve-year protection period, the Act of 14 April 2016 on Suspension of the Sale of Real Estate of the Agricultural Property Stock of the State Treasury and Amendment of Certain Acts , which significantly amended the provisions of the a.k.u.r.. It introduced the principle that only an individual farmer may be the purchaser of agricultural real estate. It extended the existing rights of the Treasury under the pre-emptive right and the right of purchase to shares in commercial capital companies. It also imposed an obligation on purchasers of agricultural real estate to maintain the agricultural holding of the acquired agricultural real estate for a period of five years and a prohibition on selling and giving possession of the acquired agricultural real estate for the same period. Both the original draft of the 2003 Act and the April 2016 draft amendment contained extensive justification for the changes being made, citing primarily the protection of Polish agricultural land, the protection and building of family farms, the protection of productive land and ensuring the country's food security through the operation of farms by qualified persons. The 2016 amendment introduced a preamble to the Act explaining the objectives to be achieved by the provisions that follow. The addition of a preamble to the Act, which usually accompanies legislation of the highest rank, but also EU directives, was intended to provide an even more convincing justification for the legislative solutions adopted.

The fundamental aim of the dissertation is to examine the legal construction of the restrictions on the in the disposal of agricultural real estate. Then, to assess whether the solutions adopted in the A.C.U.R. are adequate to the postulates for which they were enacted and to what extent they fulfil the objectives indicated in the justifications to subsequent drafts of the amendments, in the preamble and in the Act itself. It will be attempted to defend the

thesis that the provisions of the A.C.U.R. do not realise the values constituting the basis for its introduction in the form of area development of family agricultural holdings. The restrictions introduced are too restrictive for natural persons, both owners of agricultural property who want to dispose of it and its purchasers. The law restricts these entities with reference to the primary objective - the protection of agricultural land, while, on the other hand, it applies exemptions to public entities and allows them to use agricultural property for non-agricultural purposes. Consequently, family farms do not increase their area and constitutional values concerning not only farms but also agricultural land more broadly are not realised.

Furthermore, the paper formulates the following indirect research theses:

1. restrictions on property rights are part of the construction of the property rights relationship.
2. Despite different political regimes, economic and social conditions, the reasons for the protection of agricultural land remain the same.
3. Of the instruments limiting the disposal of agricultural real estate, the right of pre-emption is the simplest instrument and one that does not interfere with long-term effects.
4. the right of purchase can be considered a disguised form of expropriation and, as a consequential measure, generates the greatest uncertainty of trade.

The basic research method used in the work is the dogmatic-legal method. This is because, to a fundamental extent, the considerations undertaken are based on an analysis of the norms of the law in force and the views of doctrine and jurisprudence expressed on their basis. The dissertation also uses the historical-legal method and the comparative legal method. This is because the genesis of the regulations on the disposal of agricultural real estate, including the possibility of its disposal and, consequently, acquisition, will be presented. Provisions concerning the inheritance of agricultural holdings are discussed in terms of similarities and differences to the provisions of the AIA. The reasons for particular legal solutions have been assessed. EU legislation on agriculture, property and real estate has also been analysed, which has made it possible to assess national regulations in terms of their compatibility with EU law.

The work consists of an introduction, seven chapters and a conclusion. The first chapter discusses the construction of the property right relationship. It analyses the right of ownership as a construction of the legal-legal relationship with a division into an abstract and a concrete relationship. An important part of this chapter is a consideration of such elements of the construction as the obligations of the owner and limitations of the right of ownership. The second chapter discusses key concepts from the point of view of the subject of the work, such as the notion of an agricultural real estate, an agricultural holding, a family agricultural holding and an individual farmer.

The third chapter is concerned with the axiology of regulations introduced into the Polish law shaping the agricultural policy in the area. The considerations focus on the Act on the Acquisition of Real Estate by Foreigners and the reasons for its enactment. A historical outline of the regulation of agricultural real estate and farms from the 1920s onwards is provided, including in particular the reasons for the adoption of the regulations in force at that time. Further considerations focus on the constitutional regulation. This is followed by an analysis of the reasons for the introduction of current legal solutions. This chapter aims to present the reasons for the introduction of the restrictions on foreigners in the Act and the u.k.u.r. in the first place. In addition, it also seems necessary to present the provisions concerning the inheritance of agricultural holdings, as the motives behind their introduction will be similar to those of the contemporary legislature.

The fourth chapter divides the restrictions on the sale of agricultural real estate into two categories: those of a prior and of a subsequent nature. In doing so, a broad understanding of the limitations that have been adopted for the purpose of this dissertation is explained. In this chapter, some of the instruments regulating the sale of agricultural real estate are discussed, namely the obligation to run the agricultural holding which the acquired real estate is a part of for five years from the date of acquisition, the prohibition to sell and give possession of the acquired real estate for five years from the date of acquisition, the consent of the General Director of the National Agricultural Property Agency to the acquisition of agricultural real estate by an entity other than an individual farmer. Although the consent of the Director General of the NEB is not considered a restriction in the strict sense, in a broad sense it can also act as a measure limiting the owner's freedom. This chapter also assesses the restrictions introduced in terms of their compatibility with EU law.

The right of pre-emption is contracted in chapter five as one of the most important instruments shaping agricultural policy in terms of area. The legal construction of the right of pre-emption, its legal nature and the legal character of the provisions concerning the right in question have been analysed. The division of the right of pre-emption according to the source of its origin has also been emphasised. Because of the thematic scope of the dissertation, consideration of the exercise of the right of pre-emption has been limited to pre-emption having its source in law. This is an important part of the dissertation because the exercise of the right of pre-emption under the under the act under examination takes place in a specific manner. The chapter also contains an analysis of provisions concerning the right of pre-emption of shares in commercial capital companies which are owners or perpetual usufructuaries of agricultural real estate of a specified area.

The last of the instruments regulated in the a.k.u.r. - the right of purchase - has been discussed in the sixth chapter. The chapter contains considerations concerning the construction of this particular institution. The manner in which this right is exercised depending on the legal basis, its legal nature and the moment in which the exercise of the right of acquisition affects the legal situation of subjects are analysed, which distinguishes this institution from the right of pre-emption analysed in the previous chapter. The right of acquisition is also assessed in terms of the similarity of this institution to expropriation.

The seventh chapter analyses the legal consequences of a breach of the provisions on the disposal of agricultural real estate. The chapter begins with a consideration of the very concept of sanctions and their types. In Article 9 of the a.k.u.r., the legislator has regulated sanctions related to with non-compliance with the provisions on restrictions on the disposal of agricultural real estate and on the disposal of shares in companies that own or are perpetual usufructuaries of agricultural real estate of a certain area. The said article also describes the consequences of the purchaser's failure to comply with the other obligations under the provisions of the Act.

The conclusion contains a summary of the presented considerations and an argumentation supporting the validity of the adopted research theses. The analysis carried out proves the main thesis that the Act in its present form does not realise the values underlying its introduction in the form of area development of family farms. The Act does not effectively protect the fundamental rights referred to in the Constitution of the Republic of Poland, in the preamble to the Act on shaping the agricultural system, as well as in the Act itself.