



You have downloaded a document from
RE-BUŚ
repository of the University of Silesia in Katowice

Title: Possession of agricultural land (agricultural holding) as a parameter of agricultural activity

Author: Katarzyna Czerwińska-Koral

Citation style: Czerwińska-Koral Katarzyna. (2019). Possession of agricultural land (agricultural holding) as a parameter of agricultural activity. "Zeszyty Naukowe Wyższej Szkoły Humanitas. Zarządzanie" (Vol. 20, iss. 3 (2019), s. 75-87), doi 10.5604/01.3001.0013.7241



Uznanie autorstwa - Użycie niekomercyjne - Bez utworów zależnych Polska - Licencja ta zezwala na rozpowszechnianie, przedstawianie i wykonywanie utworu jedynie w celach niekomercyjnych oraz pod warunkiem zachowania go w oryginalnej postaci (nie tworzenia utworów zależnych).



UNIwersYTET ŚLĄSKI
W KATOWICACH



Biblioteka
Uniwersytetu Śląskiego



Ministerstwo Nauki
i Szkolnictwa Wyższego

ZN WSH Zarządzanie 2019 (3), s. 75-87

Oryginalny artykuł naukowy
Original Article

Data wpływu/Received: 7.05.2019

Data recenzji/Accepted: 3.07.2019/6.07.2019

Data publikacji/Published: 30.09.2019

Źródła finansowania publikacji: środki własne

DOI: 10.5604/01.3001.0013.7241

Authors' Contribution:

(A) Study Design (projekt badania)

(B) Data Collection (zbieranie danych)

(C) Statistical Analysis (analiza statystyczna)

(D) Data Interpretation (interpretacja danych)

(E) Manuscript Preparation (redagowanie opracowania)

(F) Literature Search (badania literaturowe)

dr Katarzyna Czerwińska-Koral^{A E F}

Uniwersytet Śląski

Wydział Prawa i Administracji

ORCID 0000-0001-9079-5297

**POSSESSION OF AGRICULTURAL LAND
(AGRICULTURAL HOLDING) AS A PARAMETER
OF AGRICULTURAL ACTIVITY**

**POSIADANIE GRUNTÓW ROLNYCH
(GOSPODARSTWA ROLNEGO) JAKO PARAMETR
DZIAŁALNOŚCI ROLNICZEJ**

Abstract: The purpose of the article is to show that the concept of agricultural activity, like the concept of an agricultural producer conducting it, can be characterized by reference to the possession of agricultural land (agricultural holding) in the meaning of civil law. Polish legislation gives many examples that possession is a parameter of agricultural activity. What's more, the trend of determining the characteristics of agricultural activity in legal regulations by the possession of means of production is perpetuated. Detachment from the legal title of factors of production in legal regulations has an impact on the decisions of the agricultural producer in the field of investing in land.

Keywords: agricultural activity, agricultural producer, possession, agricultural land, agricultural holding

Streszczenie: Celem artykułu jest pokazanie, że pojęcie działalności rolniczej, podobnie jak pojęcie prowadzącego ją producenta rolnego, może być charakteryzowane przez nawiązanie do posiadania gruntów rolnych (gospodarstwa rolnego) w rozumieniu cywilnoprawnym. Ustawodawstwo polskie daje wiele przykładów na to, że posiadanie stanowi parametr działalności rolniczej. Co więcej, trend określenia cech działalności rolniczej w przepisach prawnych przez posiadanie środków produkcji utrwała się. Oderwanie się od tytułu prawnego czynników produkcji w regulacjach prawnych ma zaś wpływ na decyzje producenta rolnego w zakresie inwestowania w ziemię.

Słowa kluczowe: działalność rolnicza, producent rolny, posiadanie, grunty rolne, gospodarstwo rolne

Introduction

Legal regulations in the field of agricultural activity have an impact on the economic decisions of those conducting this activity¹. Therefore, defining agricultural activity is not without significance, but there is no uniform definition of agricultural activity in Polish law. Similarly, the legislator did not specify a uniform concept to describe agricultural production processes. On the basis of a number of specific laws², various concepts have been introduced, such as „agriculture”, „agricultural production activity”³, „manufacturing activity”, „agricultural production” (plant or animal) or agricultural „special departments”⁴, „agricultural activity”; sometimes the term

¹ The decision making process is the foundation in every management – more on this topics J. Kisielnicki, *Zarządzanie. Jak zarządzać i być zarządzanym*, Warszawa 2008, p. 62.

² See: Art. 4 section 3 point 1 i 2 Act of 10 March 2006 on the refund of excise duty in the price of diesel oil used for agricultural production (consolidated text: Journal of Laws of 2015, item 1314); Art. 2 and 3 of the Act of 7 July 2005 on insurance of agricultural crops and livestock (consolidated text: Journal of Laws of 2019, item 447).

³ Article 6 point 4 of the Act of 20 December 1990 on social insurance for farmers (consolidated text: Journal of Laws of 2019, item 299).

⁴ Such terms are used by the legislator in Art. 2 section 2 of the Act of 26 January 1991 on personal income tax (Journal of Laws of 2018, item 1509) and the Act of 15 February 1992 on corporate income tax (consolidated text: Journal of Laws 2019, item 865)

„running an agricultural holding” appears. Conducting agricultural activity in the form of an agricultural holding has an impact on the status of the entity running this farm. The words „owner”, „farm owner”, „farm producer⁵” and „farmer⁶” appear.

Therefore, agricultural activities can be described on the basis of various determinants. Regardless of the adopted nomenclature, it is noticeable that a number of provisions characterizing agricultural activity refer to possession. It's about possession in the recognition of civil law. According to Article 336 of the Civil Code (hereinafter: Civil Code), the owner of the property is both the one who actually owns it as the owner (independent owner) and the one who actually wields it as a user, pledgee, tenant, lessee or having other right with whom he/she connects specific authority over someone else's property (dependent holder).

The purpose of this article is to show a number of selected examples of legal regulations relating to agricultural activity and to characterize this activity through possession. Everything aims to support the thesis that possession determines and characterizes a particular type of activity, which is agricultural activity. It is noticeable that determining the features of agricultural activity in legal regulations by possession is becoming more frequent. Obviously, stability in the scope of such regulation may constitute a certain „background” of decision making of farmers (farm managers)⁷. Thus, the tendency to detach from the legal title of factors of production in legal regulations has an impact on the agricultural producer's decisions regarding economic choices in order to achieve complex economic goals, in particular in the field of investing in land.

1. Owning an agricultural holding (family holding)

Agricultural activities are usually based on land. For this reason, agricultural activity was traditionally recognized as the exercise of property and other rights. Currently, the burden has shifted from agricultural ownership to a set of components organized to conduct agricultural activity, i.e. to an agricultural holding, and then to an agricultural enterprise understood as a form of conducting this activity⁸. Consequently, in the content of the definition of an agricultural holding contained in Article 55 of the Civil Code, the legislator detached from the criterion of ownership, which was explicitly referred to in the Regulation of the Council of Ministers of 28 November 1964 on the transfer of ownership of agricultural real estate, the

⁵ Article 613 of the Civil Code, the Act of 15 September 2000 on agricultural producer groups and their associations, and on the amendment of certain acts (consolidated text: Journal of Laws 2018, item 1022)

⁶ Article 6 point 1 of the Act of 20 December 1990 on social insurance for farmers (consolidated text: Journal of Laws of 2019, item 299).

⁷ See R. Ciborski, *Makroekonomiczne uwarunkowania rozwoju przedsiębiorstw*, [in:] *Uwarunkowania i rezultaty zmian w przedsiębiorstwie*, red. J. Paszkowski, Białystok 2009, p. 13.

⁸ R. Budzinowski, *Problemy prawa rolnego. Przemiany podstaw legislacyjnych i koncepcji doktrynalnych*, Wydawnictwo Naukowe UAM, Poznań 2008, p. 112, 115, 151.

abolition of ownership of such real estate and the inheritance of agricultural holdings⁹. Forest land, which can be a component of an agricultural holding, also does not have to refer to the ownership right. As shown by the provisions of the Act of 28 September 1991 on forests¹⁰, the definition of forest owner also refers to autonomous and dependent possession.

In the definition of a family farm constituting the basic form of conducting agricultural activity in Poland¹¹ contained in the Act of 11 April 2003 on shaping the agricultural system¹² (hereinafter: u.k.u.r.), there is no reference to the right to property. As we read in Article 5 of u.k.u.r. a family farm is a farm that is run by an individual farmer, and his total arable land does not exceed 300 ha. In addition, the very definition of an individual farmer (Article 6 u.k.u.r.) refers to various legal titles to arable land, including directly to independent and dependent (lease) ownership, as an individual farmer is considered to be a natural person who is the owner, perpetual usufructuary, independent owner or a tenant of agricultural real estate, whose total UAA does not exceed 300 ha, possessing agricultural qualifications and residing in the commune for at least 5 years, in the area of which one of the agricultural properties belonging to the agricultural holding is located and who personally runs the holding during that period¹³. It is even acknowledged that for running an agricultural holding, the actual possibility of using agricultural land is sufficient, regardless of the type of legal title to such land¹⁴, and the mere exercise of agricultural activity based on the components of a farm is associated only with possession¹⁵.

2. Obligations of the farmer (agricultural producer) determined by possession

The legislator defines the conduct of agricultural activity by imposing on the individual farmer certain obligations regarding the possession of agricultural real

⁹ Consolidated text: Journal of Laws 1972, No. 31, item 215 as amended.

¹⁰ Consolidated text: Journal Of Laws of 2018, item 2129 as amended.

¹¹ Article 23 of the Polish Constitution.

¹² Consolidated text: Journal Of Laws of 2018, item 1405.

¹³ It is believed that a natural person personally runs an agricultural holding if he/she works in that holding, makes all decisions regarding the conduct of agricultural activity in this holding and is subject to social insurance for farmers as a farmer to the full extent by virtue of the Act, unless the area of his/her holding does not exceed 20 ha of arable land.

¹⁴ R. Budzinowski, *Pojęcie gospodarstwa rolnego według kodeksu cywilnego (rozważania na tle art. 55³ k.c.)*, „Ruch Prawniczy Ekonomiczny i Społeczny” 1991, No. 3, p. 61 i 62; R. Budzinowski, *Koncepcja gospodarstwa rolnego w prawie rolnym*, Wydawnictwo UAM, Poznań 1992, p. 88; J. Górecki, *Gospodarstwo rolne jako przedmiot zastawu*, „Rejent” 2003, No. 4, p. 52; as well as case law, e.g. Order of the Supreme Court of 4 October 2000, III CKN 1387, Legalis; Judgment of the Voivodship Administrative Court in Olsztyn of 5 March 2009, I SA / I 481/08, Legalis.

¹⁵ This is also confirmed by the provisions on the cultivation contract regarding the transfer of ownership (Articles 625 and 626 of the Civil Code).

estate. For example, a buyer of an agricultural property is obliged to run an agricultural holding, which includes the acquired agricultural property, for a period of at least 5 years¹⁶ from the day of purchasing the property, and in the case of a natural person running the holding in person (Article 2b (1)). The concept of conducting an agricultural holding assumes economic activity. As stated by the Voivodship Administrative Court in the judgment of 24 April 2014 (II SA / PO 93/14, Legalis), the sole possession or ownership of an agricultural holding cannot be qualified as running it if it is not related to carrying out agricultural activities, which also includes undertaking decisions regarding farming activity on this farm¹⁷. Furthermore, there is a prohibition on selling and handing over acquired property to other entities within a specified period (Article 2b (2)). This prohibition covers changes in the scope of ownership (sale) and possession of agricultural property (Article 336 of the Civil Code), which exists until consent to the sale and transfer of ownership of the acquired property to other entities (Article 2 (3) of the Civil Code) issued by the Head of General National Agricultural Support Center (until recently a common court granted permission¹⁸).

The introduction of a moratorium on the sale of real estate or parts of it constituting the Agricultural Property Stock of the Treasury¹⁹ resulted in shifting the focus in conducting agricultural activity to lease, and therefore dependent possession²⁰. The preferences for the dependent holder to carry out agricultural activity are manifested in the form of the pre-emptive right of the lessee in the case of the sale of agricultural property (Article 3 (1), (2) of the u.k.u.r).

In the 60s of the twentieth century A. Stelmachowski drew attention to legal acts that at the time specified certain obligations of a farmer according to his state of possession and had specific legal effects connected with it²¹. He pointed out, for example, that land tax was charged to persons who were owners or holders of agricultural holdings, with the proviso that if a right of use was established on the agricultural holding, the tax liability was imposed on the user²². Similarly today agri-tax legislation identifies agricultural activities through possession. And so, in accordance with the provisions of the Act of 15 November 1984²³ on agricultural

¹⁶ Previously, this period was 10 years, which was amended by the Act of 26 April 2019 on the amendment to the Act on shaping the agricultural system and some other acts, which entered into force on 26 June 2019 (Journal of Laws of 2019, item 1080).

¹⁷ J. Bieluk, *Ustawa o kształtowaniu ustroju rolnego. Komentarz*, C.H.Beck, Warszawa 2016, p. 112.

¹⁸ See footnote 16.

¹⁹ The provision of Article 1 of the Act of 16 April 2016 on suspending the sale of the property of the Agricultural Property Stock of the Treasury and amending some acts (Journal of Laws of 2016, item 585).

²⁰ See regulations regarding the lease included in the regulations of 19 October 1991 on the management of agricultural property of the Treasury (Journal of Laws of 2018, item 91, as amended).

²¹ See A. Stelmachowski, *Istota i funkcja posiadania*, Wydawnictwo Prawnicze, Warszawa 1958, p. 123-125.

²² Article 2 of the decree of 30 June 1951 on land tax (Journal of Laws No. 38, item 283, as amended).

²³ Consolidated text: Journal of Laws of 2017, item 1892.

tax, taxpayers of agricultural tax are natural persons, legal persons, organizational units, including companies, without legal personality, who are:

- 1) land owners;
- 2) autonomous possessors;
- 3) perpetual lessees;
- 4) owners of land owned by the State Treasury or local government unit, if possessing:
 - a) results from a contract concluded with the owner, the National Agricultural Support Center or another legal title, or
 - b) is without a legal title, except for land that is part of the State Treasury's Agricultural Property Resource or managed by the State Forests; in this case, the taxpayers are respectively the organizational units of the National Support Center for Agriculture and State Forests.

It is a rule that if the land is in independent possession, the tax obligation in the scope of agricultural tax is borne by the independent holder, and if the land of the agricultural holding has been fully or partially leased on the basis of a contract concluded pursuant to the provisions on farmers' social insurance or provisions regarding obtaining structural pensions, the taxpayer is the lessee. Similarly, if the farm land was contributed to the production cooperative as a land contribution, the production cooperative is the taxpayer of the agricultural tax.

Court rulings regarding agri-tax obligations indicate that the legislator uses the concept of possession under the Civil Code. Due to the fact that the legislator does not introduce a different regulation and meaning of this term at the same time, and nothing else results from the content and purpose of the act on agricultural tax, according to the systemic interpretation, the view that it is a regulated and defined legal institution is fully justified in Article 336 of the Civil Code²⁴.

Further, the provisions of the Act of 10 March 2006 on the refund of excise duty included in the price of diesel oil used for agricultural production²⁵ provide for the refund of this tax to an agricultural producer, referring in the scope of the concept of agricultural producer to the Act on agricultural tax.

The administrative and judicial case-law indicates that it is not the content of the application that constitutes an independent basis for granting an excise duty refund, but the actual state of possession and co-possession of agricultural land confirmed by the content of the land registry and the consent of the joint owners²⁶.

From the content of the judgment of the Voivodship Administrative Court in Szczecin of 14 January 2015²⁷ it follows that if there is a concurrence of title and any

²⁴ Judgment of the Supreme Administrative Court of 12 February 2016, II FSK 3601/13, Legalis; similarly, the Judgment of the Voivodship Administrative Court in Kielce of 19 January 2011, I SA / Ke 599/10, Legalis.

²⁵ Consolidated text: Journal of Laws 2015 item 1340.

²⁶ Judgment of the Provincial Administrative Court in Warsaw of 27 September 2017, VIII SA / Wa 552/17, Legalis.

²⁷ I SA/Sz 1051/14, Legalis.

form of dependent possession (e.g. lease, lending), the entity entitled to a refund of that tax will be not the owner, but the lessee or the lender. It does not matter in what form the dependent possession contract will be concluded. This court also emphasized that a broad formula of possession should be adopted, i.e. both dependent and autonomous, as it is supported by Article 3 section 1 of the Act of 10 March 2006 on the refund of excise duty included in the price of diesel oil used for agricultural production, the words “being the owner of an agricultural holding”, and a reference in Article 3 section 2 of this Act to the provisions on agricultural tax, where the legislator explicitly refers and separates the institution of possession without a legal title (Article 3 (1) (2) and (4) (a) and (b) of the Act of 15 November 1984 on agricultural tax .

Just as the reference to possession used to be included in the provisions regarding insurance of compulsory fire insurance for buildings²⁸, so now, in accordance with Article 2 point 12 of the Act of May 22, 2003 on compulsory insurance, the insurance guarantee fund and the Polish office of motor insurers, i.e. of 9 February 2018²⁹, a farmer is a natural person in whose possession or joint ownership is an agricultural holding. Consequently, insurance cover under the provisions of this Act can only cover damage caused in connection with the farmer’s possession of an agricultural holding. The insurance does not therefore cover the entire civil liability of the insured persons. The subject of insurance is only a specific part of this liability. Liability for damage related to possessing an agricultural holding means that the insurer will not be liable for damage related to another sphere of life of the insured person (e.g. damage related to business other than farming or private life of the insured). It is required that the occurrence of damage be related to the functional operation of the agricultural holding³⁰. Finally, an example of characterizing agricultural activity by possession gives the provision of Article 2 point 2 of the Act of 7 July 2005 on insurance of agricultural cultivation and livestock³¹, where the provision sets out the agricultural producer by reference to the possession (joint ownership) of an agricultural holding.

3. Farmer’s (agricultural producer) entitlements determined by possession

The stage of development of agricultural law was different in times analyzed by A. Stelmachowski and today. This is connected with the development of land rights as a basic factor in the production process. The place and role of land in the agricultural

²⁸ Ordinance of 28 March 1951 on compulsory insurance of buildings (Journal of Laws No. 21, item 168).

²⁹ Journal of Laws of 2018 item 473.

³⁰ Judgment of the Court of Appeal in Łódź of 9 June 2016. I ACa 1751/15, Legalis; see also the judgment of the Court of Appeal in Białystok of 30 April 2012 I ACa 730/11, OSAB 2012 No. 2-3 and the judgment of the Court of Appeal in Łódź of 19 May 2011 I ACa 225/11, OSAŁdz 2012 No. 3, item 24.

³¹ Consolidated text: journal of Laws of 2019 item 47.

production process has changed over the years. And so once the possession of a farm was referred to by the decree of 30 June 1951 on the obligation to provide benefits in kind for certain public purposes³², the possession of an agricultural holding was connected with the obligation to supply cereals, potatoes, slaughter animals. The owner was obliged to deliver, and when the farm was rented or actually used by another person – the lessee or user³³. The reference to possession could be found in the provisions on the obligatory electrification of villages and estates³⁴. Today, the indicated legislative direction related to the reference to possession is strengthening, which is related to the provisions on the principles and procedure for granting EU assistance. Thus, at present, certain entitlements in conducting agricultural activity can be obtained by referring to the possession of agricultural land. This approach of the legislator results from the fact that EU protection is determined not by the title to the land, but by the functions fulfilled by that land (production, environmental, social ones)³⁵. In the jurisprudence of administrative courts, it is clearly emphasized that in order to obtain EU assistance, it is necessary to actually own a farm and not to own a legal title. In other words - the right to receive payment is the sole possession of an agricultural holding within the meaning of Article 336 of the Civil Code, i.e. a factual state, the essence of which is physical power over the thing with the intention of possessing the thing for itself. Moreover, an independent or dependent holder may also be a person who does not have any legal title to ownership. A person who owns a thing in bad faith also has the attribute of a holder. In the jurisprudence, it is even emphasized that in relation to cases for the payment for agricultural land, the condition of possessing agricultural land cannot therefore be understood as determining the legal title to which such possession results³⁶. Therefore, proceedings regarding payments for agricultural land cannot be used to regulate the ownership of agricultural holdings (judgment of the Voivodship Administrative Court in Poznań, III SA / Po / 07³⁷).

The provisions of the Act of 18 December 2003 on the national system of producers' records, farm records and records of aid applications for payment³⁸ refer to the concept of agricultural producer (Article 3 point 3) by referring to the definition of a farmer within the meaning of Article 4 paragraph 1(a) Regulation No.

³² Journal Of Laws No. 38, item 284 as amended.

³³ See mentioned provisions A. Stelmachowski, *Istota i funkcja posiadania...*, p. 124.

³⁴ Act of 28 June 1950 on the universal electrification of villages and estates (Journal of Laws of 1954, No. 32, item 135).

³⁵ D. Łobos-Kotowska, *Współczesne funkcje posiadania gruntów rolnych na gruncie przepisów statuujących pomoc unijną*, [in:] *Rozprawy z prawa prywatnego. Księga pamiątkowa dedykowana Profesorowi Aleksandrowi Oleszce*, ed. A. Jacyszyn, A. Dańko-Roesler, M. Pazdan, W. Popiołek, Stowarzyszenie Notariuszy RP, Warszawa 2011, p. 288.

³⁶ So in: Voivodship Administrative Court in Olsztyn in the judgment of 30 July 2009 I SA / OI 398/09, Legalis, as well as, for example, judgments of the Supreme Administrative Court: of 17 January 2008, II GSK 227/07 and 2 September 2008, II GSK 311/08, *orzeczenia.nsa.gov.pl*.

³⁷ Citation after: A. Zieliński, *Ekonomiczne wsparcie rozwoju rolnictwa ze środków unijnych w orzecznictwie Wojewódzkiego Sądu Administracyjnego w 2007 r.*, „Przegląd Prawa Rolnego” 2008, No. 7, p. 269.

³⁸ Consolidated text: Journal of Laws of 2017 item 1853.

1307/2013 and the animal keeper or the animal keeper within the meaning of the provisions on the system of animal identification and registration. It should be added that the provisions of the Act of 18 December 2003 on the national system of producers' records, farm records and records of aid applications for payment on an agricultural holding refer to all agricultural properties owned by the same entity. An agricultural holding is treated as a unit or several subject-related production units managed by an agricultural producer. The functional aspect related to agricultural production is important, not the legal title of land ownership. An agricultural holding understood in this way may comprise land with different ownership structures. It may include both real estate owned by the farmer, as well as real estate subject to other rights *in rem* or obligation, or finally real estate owned by the farmer, who has no formal legal title. In functional terms, the farm may also include real estate owned by the farmer, but not directly used by it (e.g. leased)³⁹.

The above-mentioned provisions also do not specify the definition of the concept of possession, which is why it is necessary to refer to the provisions of the Civil Code (Article 336 of the Civil Code). It should be remembered that possession within the meaning of the Civil Code may constitute an element of subjective law, being a manifestation of the right of the owner (lawful possession), but may also indicate the state of actual power over the thing, and in a situation when the law actually exercised by the holder serves another entity (unlawful possession). In addition, dependent possession is usually the power over a thing that derives from a legal relationship that gives the holder certain, well-defined rights. However, the provision of Article 336 of the Civil Code lists them only as examples illustrating that the scope of actual power over an item may correspond to the rights of the user, pledgee, tenant, lessee. Since the dependent owner only rules the thing, such as the user, unlawful dependent possession is also permissible, i.e. exercised by the person who rules the thing without legal title. In view of the distinction in the provisions of the Civil Code in the types of possession, it should be considered that the construction of area payment institutions results from the common policy of supporting farmers' income and concerns financial assistance provided only to those entities that are actually users of agricultural land (so says the Supreme Administrative Court in the judgment of 17 January 2008⁴⁰). In other words, to obtain the right to subsidies, possession of agricultural land and being an agricultural producer are of great importance, and the legal title that would form the basis of this possession does not really matter, because possession does not have to be based on any legal title, and the right to subsidies is not associated with the right to land⁴¹. The entity entitled to receive payments is therefore the holder of agricultural land who actually uses the land (engages in agricultural activity), and the

³⁹ Judgment of the Supreme Administrative Court of 25 May 2011. II GSK 540/10, Legalis.

⁴⁰ II GSK 227/07, Legalis.

⁴¹ Judgment of the Supreme Administrative Court of 21 April 2009. II GSK 851/08, Legalis.

status of owner (co-owner) does not yet constitute entitlement to receive payment⁴². It is recognized that the element of physical possession over a thing allows the use of things in particular in a way that can be done by persons who have a specific right to things, so that “what the entitled is eligible to do, the owner can actually do”. The factor of actual power is therefore the proper physical control of things. Actual power must be a permanent state, which means that the relationship of the owner with the thing cannot be expressed in a one-time or even occasional seizure of the thing, but in the possibility of using it indefinitely⁴³.

Similarly, a reference to possession can be found in the regulations on obtaining EU assistance from the Rural Development Program⁴⁴. If the condition for granting the aid is the possession of a farm or land and the aid is granted to the surface of the land, and this land is the subject of autonomous and dependent possession, the dependent holder is entitled to the land. This means that the aid is granted to an entity which actually conducts agricultural activity on these lands. It is therefore necessary to emphasize that in order to receive payments it is not enough to be the owner of agricultural land within the meaning of the Civil Code, but also used it for agriculture - which means that the right to payment is vested in the entity that actually uses the agricultural land⁴⁵.

Conclusions

The examples of legal regulations related to agricultural activity allow the formulation of the following conclusions.

The possession of agricultural land (agricultural holding) defines and characterizes agricultural activity. There is a visible tendency of the legislator to determine the status of a person conducting agricultural activity (agricultural producer) by referring to his possession of factors of production, in particular land. The legislator defines the obligations of an agricultural producer (tax, insurance) or his rights (obtaining EU assistance, excise duty refund) in appeal to owning a farm (agricultural land), and not to the legal title, in particular the right to property. Furthermore, in the case of entitlements in the form of EU aid, possession has a special feature: the producer must actually use the property.

⁴² Judgment of the Voivodship Administrative Court in Olsztyn of 30 July 2009, I SA / OI 398/09, Legalis; Judgment of the Provincial Administrative Court in Rzeszów of December 2, 2008. I SA / Rz 596/08, Legalis.

⁴³ Judgment of the Supreme Administrative Court of 22 April 2009. II GSK 853/08, Legalis; similarly, the judgment of the Supreme Administrative Court of 19 March 2009. II GSK 790/08, Legalis; regarding the receipt of payments for support for agricultural activities in less-favored areas, see Judgment of the Supreme Administrative Court of 16 October 2008. II GSK 382/08, Legalis.

⁴⁴ Act of 20 February 2015 on support for rural areas with the participation of the European Agricultural Fund for Rural Development under the Rural Development Program for 2014-2020 (consolidated text: Journal of Laws of 2018, item 1936).

⁴⁵ Judgment of the Provincial Administrative Court in Szczecin of June 16, 2010, I SA / Sz 84/10, Legalis.

One may be wondering about the reasons for the legislative trend determining agricultural activity through the reference to possession. A. Stelmachowski once claimed that virtually all economic turnover was regulated separately from the state of ownership and from the economic point of view the state of ownership became indifferent. He emphasized that in the period he examined, the reason for this was the property crisis (caused by economic and political moments) and that, therefore, the importance of ownership increased so much that it even outpaced the significance of property rights in a sense⁴⁶. Such a statement cannot be applied to modern times. Rather, it should be recognized that since ownership is a parameter of agricultural activity, it means that possession (independent and dependent) is equated with ownership. The owner separates himself from the subject of his/her property. Thus, an agricultural holder may not be the owner of title. Consequently, possession as a feature of agricultural activity will consolidate, pushing ownership back to the background.

An agricultural holding is increasingly treated as a unit managed by an agricultural producer. The functional aspect, related to running agricultural production, needs to be emphasized, i.e. use, active possession, management. Management is the achievement of goals by people⁴⁷, and the fact that the legal title to land is not significant, may have an impact on the producer's (manager's) economic decisions regarding the acquisition of land rights (e.g. rent, not ownership). In the justification of the judgment of 12 April 2000⁴⁸ the Constitutional Tribunal has indicated a range of possibilities when it comes to the legal forms of land ownership in conducting agricultural activity, mentioning, next to ownership, perpetual usufruct and several other forms of using right-law properties – use and obligatory – rent, lease, lending. Such a view allows interested parties to choose the legal relationship that best suits their economic intentions and financial capabilities, especially since it is believed that „today's farmers - entrepreneurs are characterized by great prudence in the collection and distribution of means of payment”⁴⁹. Therefore, those conducting agricultural activity may obtain rights to agricultural property based on contractual relations related to the use of things, such as first of all land lease, tenancy or leasing agreements and lending for use agreement which are applicable in rural relations. These contracts belong to the group of contracts whose purpose is to enable civil law entities to use things or rights. The possession of agricultural real estate made available on the basis of these obligations and property relations gives certain rights in the field of disposing of the real estate and using it (use), and at the same time is not synonymous with the acquisition of ownership or perpetual usufruct and does not

⁴⁶ A. Stelmachowski, *Istota i funkcja posiadania*, p. 125.

⁴⁷ Z. Mikołajczyk, K. Zimnikiewicz [in:] *Ekonomika i zarządzanie małą firmą*, ed. B. Piasecki, Warszawa – Łódź 1998, p. 153, 157.

⁴⁸ K 8/98, OTK 2000, No 3, item 87.

⁴⁹ W. Wielicki, R. Baum, *Problematyka zarządzania przedsiębiorstwami rolniczymi*, „Roczniki Nauk Rolniczych”, Seria G 2010, Vol. 97, No. 3, p. 293.

require the involvement of large monetary capital and is not covered by agricultural real estate regulations⁵⁰.

Finally, it should be postulated that the change in the legislator's tendency to parameterize agricultural activity by owning the means of production should not change in accordance with the management principle that „a positive change requires significant stabilization”⁵¹.

Bibliography

Bieluk J., *Ustawa o kształtowaniu ustroju rolnego. Komentarz*, C.H.Beck, Warszawa 2016.

Budzinowski R., *Pojęcie gospodarstwa rolnego według kodeksu cywilnego (rozważania na tle art. 55³ k.c.)*, „Ruch Prawniczy Ekonomiczny i Społeczny” 1991, No. 3.

Budzinowski R., *Koncepcja gospodarstwa rolnego w prawie rolnym*, Wydawnictwo Naukowe UAM, Poznań 1992.

Budzinowski R., *Problemy prawa rolnego. Przemiany podstaw legislacyjnych i koncepcji doktrynalnych*, Wydawnictwo Naukowe UAM, Poznań 2008.

Ciborski R., *Makroekonomiczne uwarunkowania rozwoju przedsiębiorstw*, [in:] J. Paszkowski (ed.), *Uwarunkowania i rezultaty zmian w przedsiębiorstwie*, Białystok 2009.

Górecki J., *Gospodarstwo rolne jako przedmiot zastawu*, „Rejent” 2003, No. 4.

Łobos-Kotowska D., *Współczesne funkcje posiadania gruntów rolnych na gruncie przepisów statuujących pomoc unijną*, [in:] *Rozprawy z prawa prywatnego. Księga pamiątkowa dedykowana Profesorowi Aleksandrowi Oleszce*, ed. A. Jacyszyn, A. Dańko-Roesler, M. Pazdan, W. Popiołek, Stowarzyszenie Notariuszy RP, Warszawa 2012.

Kisielnicki J., *Zarządzanie. Jak zarządzać i być zarządzanym*, Warszawa 2008.

Mikołajczyk Z., Zimnikiewicz K. [in:] *Ekonomika i zarządzanie małą firmą*, ed. B. Piasecki, Warszawa – Łódź 1998.

Perechuda K., *Metody zarządzani przedsiębiorstwem*, Wrocław 1998.

Stelmachowski A., *Istota i funkcja posiadania*, Wydawnictwo Prawnicze, Warszawa 1958.

Wielicki W., Baum R., *Problematyka zarządzania przedsiębiorstwami rolniczymi*, „Roczniki Nauk Rolniczych”, Seria G 2010, t. 97, z. 3.

Zieliński A., *Ekonomiczne wsparcie rozwoju rolnictwa ze środków unijnych w orzecznictwie Wojewódzkiego Sądu Administracyjnego w 2007 r.*, „Przegląd Prawa Rolnego” 2008, No. 7.

⁵⁰ See provisions of the Act of 11 April 2003 on the formation of the agricultural system (consolidated text: Journal of Laws of 2019, item 1362) and the Act of 24 March 1920 on the purchase of real estate by foreigners (uniform text: Journal of Laws from 2017, item 2278, as amended).

⁵¹ K. Perechuda, *Metody zarządzani przedsiębiorstwem*, Wrocław 1998, p. 9.

Author`s resume:

Katarzyna Czerwińska-Koral – doctor of law; Assistant Professor at the Department of Agricultural Law and Spatial Management at the Faculty of Law and Administration of the University of Silesia in Katowice; judge at the district court.

Nota o Autorze:

Katarzyna Czerwińska-Koral – doktor nauk prawnych; adiunkt w Katedrze Prawa Rolnego i Gospodarki Przestrzennej na Wydziale Prawa i Administracji Uniwersytetu Śląskiego w Katowicach; sędzia sądu rejonowego.

Contact/Kontakt:

Katarzyna Czerwińska-Koral
e-mail: kaczekor@gmail.com