

Lease Agreement in the European Countries

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Abstract—This paper present lease agreement regulations in selected European countries. The lease agreement has a long history and now is one of the main ways to manage agricultural lands in Europe. The analysis of individual regulations, which has been done, indicates that this agreement is very important to build social relations in agriculture and society. This article provides an analysis of the legal regulations concerning the lease in France, Spain, Switzerland, Ukraine and Italy. Article is example of study of the legal regulations and can be used for legal changes in individual countries.

Keywords—Lease agreement, Agricultural law, History of lease agreement.

I. INTRODUCTION

THE lease, being one of the key ways to manage agricultural lands, has a long history. Various solutions, which have been implemented in European countries, fit into the marketing of agricultural real properties, which in Europe is complicated and full of numerous legal solutions. Part of these solutions, which is listed below, is to support the main objective of national agricultural policy, which is the development of family farms [1]. Presentation of various legal solutions in the particular countries will allow us to answer the question what the role of the agricultural real properties lease agreement in shaping the system of agriculture is. This question becomes even more up-to-date in the light of the ongoing debate and legislative works related to the model of agricultural real properties lease, which belong to the State Treasury in Poland.

II. FRANCE

The restrictions on real properties in France are contained in the Act of 5th August 1960 on the orientation of agriculture (loi d'orientation agricole), which has been amended several times. This Act, despite its nearly 50-year-long validity, continues to indicate a lot of innovative solutions which, above all, are related to the matter of establishing companies of agricultural equipment and settlement (SAFER societies d'amenagement et d'etablissement rural). It is beyond doubt that many other European countries modelled on French solutions, e.g. Spain or, in some part, Germany. The statutory land buying preference [2] (droit de preemption) and the possibility to lease holdings for the period of up to 6 years

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with a clause allowing its extension were granted to these companies.

The lands, which were repurchased by the companies, are used to create new or expand existing holdings. The most common case is that the company purchases a larger holding and divides it into several smaller ones, thus pursuing the objective of national agricultural policy to support family farms. The activity of agricultural equipment and settlement companies is to prevent concentration of an excessive number of lands in the hands of a single entity, regardless of whether it is an individual or a legal entity. It is noteworthy that, in contrast to the Polish law, there is no legal definition of a family farm in the French law. It has been established by the doctrine that a holding which provides jobs for spouses and their children shall be considered as a family farm. It shall be noted that production activities in a French family farm should be based on the principle of personal management, and thereby it is adopted in the French doctrine that the area of such a holding shall not exceed 100 ha and it does not matter whether the lands which are part of the family farm are the property or lease of the farming family. It should be noted that this size is also determined by the Rural Code interpretation. The limitation of this size shall be positively assessed in the light of the overall objectives of the national agricultural policies which are focused on supporting the development of family farms. The regulations concerning the maximum area are accompanied by an even more strictly observed regulation concerning the minimum area, which has been changed several times and oscillates in the range of 1-2 SMI.

The possibility of holding a team-like family farm, in addition to personal management, is a unique rarity. The holding is managed jointly (the team often consists of relatives or neighbours). Farmers may establish specific companies of different kind for the purposes of managing a team-like family farm, such as: an agricultural group of common management (GAEC), a limited liability company (EARL) [3], an agricultural land team (GFA).

French legislation, as already mentioned, attaches great importance to the personal management of a family farm which is conducted by spouses. To this end, SAFER is to aim to enlarge the holdings, but only up to a size of 4 SMI. According to Aleksander Lichorowicz [4], SMI is a unit of agricultural land area which is to provide employment to two people who work together in a full working time.

1 SMI areal size is established depending on the department. In the national scale 1 SMI equals about 25 ha. French legislation also applies a new unit unite de reference – UR (1,5 UR equals 4 SMI). However, while managing land, SAFER cannot lead to a reduction of a family farm area below 1 SMI, including the area of lands which are leased by a

farmer (over time this area was increased to 2 SMI).

The right to purchase the holdings which were restructured by SAFER is granted to well-defined entities [5] in a specific order. Firstly to farmers whose holdings have decreased significantly, secondly young farmers and farmers who migrate from so-called overpopulated areas and thirdly farmers whose holdings require “upelnorolnienie” or helpers and partners of family farm.

The acquisition of lands from the companies' resources is conducted by means of a public tender. As in legislation of other European countries, the purchaser of such a land, apart from being the member of the proper group, must possess proper professional qualifications and the necessary financial resources to operate on the purchased land. Various other obligations of the type of basic obligation of personal management of purchased lands for a period of at least 15 years are imposed on the purchasers of agricultural lands. Over this period the holding cannot be put in use or leased and its disposal requires an approval of SAFER. The aim of this solution is to prevent not only speculation, but also the excessive concentration of lands in the hands of one entity that purchase lands from SAFER through “substituted” persons. When lands cannot be sold, SAFER leases them. To leases which are concluded by SAFER the general principles of agricultural leases [6] do not apply. The Companies were granted the role of intermediaries in lease trade between farmers.

According to the Act of 1999, each liquidation or reduction of holdings which fits in the maximum limit of 1 UR [7], as well as expanding the holding to the area of more than 1 UR requires the acceptance of the administration. This provision applies to all transactions in agricultural lands within the farmer's family.

A special legal regime applies also to the division of a family farm by means of inheriting. This division may be excluded and the other heirs benefit from repayment.

III. SPAIN

In Spain, in 1995, by means of Act on modernizing holdings, the rules which regulate the principles of real properties marketing were simplified. It shall be noted that the definition of a priority holding was introduced. It shall be noted that this definition includes both family farms and civil law company and cooperatives.

The above-mentioned Act does not contain a separate definition of a family farm, but only diversifies priority holdings into family farms and other individual holdings which meet the requirements referred to in the Act of 1995 on modernizing holdings.

The key concept for marketing real properties in Spain is *unidad minima de cultivo* (minimum of the arable land area). This is a sufficient area to provide a satisfactory income (*rendimiento satisfactorio*) with the use of normal technical standards of production. Of course, while defining the minimum area, the characteristics of the region due to the

proper location of the farm shall be taken into account. The fact that the Act does not define what a “satisfactory income” means is also a problem. It is understood that it is an income sufficient to maintain the farming family. The introduction of the term of minimum arable land area has a significant practical and legal meaning.

Any transaction made in the both civil and administrative law marketing or by inheriting may not lead to reduction in holding below the minimum area of cultivation.

An interesting solution restricting the marketing of inherited real properties seems to be the absolute indivisibility of the inherited holding. This rule is particularly observed in the case of holdings, which were passed under the decree of 1973 on agricultural reform. The article no. 21 of this decree regulates mainly the principles of distribution of lands which were taken over by Instituto Nacionale de Reforma y Desarrollo Agrario (the Institute of Agricultural Reform and Development of Agricultrale – IRYDA) [8]. As part of the IRYDA farmers may acquire land only through an administrative edict and only in the scope of cancellable right to use holdings as an owner and is obliged to buy it from IRYDA [8]. Such a holding may become a farmer's property only if it has been properly managed for the period of 8 years. The ownership of such a holding is conveyed by the means of an administrative decision. IRYDA also retains some control powers after the property has been conveyed. First of all they are focusing on observing the prohibition of dividing the real property (possible consent to such a division) and on inspecting transactions which are related to real properties, which were taken over within the frames of the agricultural reform.

The marketing of agricultural lands is also limited by a neighbours' buying preference which, unlike in other countries, is vested not to various agricultural agencies but only to the owners of priority holdings. The regulation related to the buying preference also contains provisions, which normalize counteractions against excessive concentration of lands in the hands of only one entity.

Spanish legislation limits the marketing of agricultural real properties which originates from the agricultural reform [9]. The holdings which originated from the agricultural reform cannot be enlarged without the consent of the agency of public administration, in this case without the consent of IRYDA. Such a solution aims to prevent speculations in lands and their excessive concentration. This inspection does not affect agricultural real properties which remain in general marketing.

Spanish legislator also subjected to control [10] the right to real property lease. The lease agreements which lead to the origin of the holdings of area larger than 50 ha (in the case of so-called irrigated lands), 500 ha (in the case of non-irrigated lands) and 1000 ha (in the case of pastures). Leaseholders, which are owners of 20 ha of irrigated lands or 200 ha of non-irrigated lands cannot use the buying preference in relation to lands which they lease. Such a solution shall be evaluated positively from the Spanish agricultural policy point of view

as leading to retain, for as long as possible, priority holdings and to create new holdings.

IV. SWITZERLAND

In Switzerland, the law concerning marketing of agricultural real properties was subjected to many modifications and changes over the period of the 20th century. The latest deed, which regulates the described problems, is the agricultural land law of the 4th of October 1991 [11], which is viewed as the agricultural code of a specific kind.

The Swiss legislator draws particular attention to prevent irrational division of a family farm. The division of agricultural real properties depends on the consent of public administration [12]. A part of the family farm which remained after the division is to ensure that the vendor has normal conditions of existence. Family-like transactions do not require consent of public administration. There are several possible grounds on the basis of which public administration may refuse to grant permission for the conclusion of a particular transaction which is to transfer ownership. The permission will not be granted to the purchaser if he, due to the transaction, becomes the owner or user of agricultural lands which provide the farming family the existence of a level greater than average (an income within the limits of 2,5-3 times of the average earnings achieved by the employees or being among the 25% of holdings with the highest income in the region) [13]. This regulation aims mainly to support family farms by providing them with an appropriate area to conduct business. One shall draw attention to the fact that the Swiss legislator waives in this case the principle of examining the family farm in terms of work in aid of the achieved profitability. This criterion refers to the concept of family farms which had been contained within the already repealed Acts. This inconsistency of the legislator may puzzle and often lead to divergence in terms of which criterion becomes more important. Already historical, as repealed in 1991, is the regulation derived from the Act of the 12th of June 1951 on the protection of peasant's possession in agriculture, which represents the art. 19 according to which a farmer may be an owner of only one holding, an area and production capacity of which ensure the livelihood of the average farming family [14]. This doctrine was interpreted as an entry which allowed the control of over-concentration of land. If the parcel of an area larger than 3 ha was the subject of acquisition, public authority could refuse to grant the permission for such a transaction recognizing that the acquired property would result in above-average earnings of a farming family. The current reason for refusals of transactions, which has been contained within agricultural land law, is that of excluding self-farming. Only a purchaser who will independently manage the holding can get permission from the administration. This refusal may also concern people who do not possess proper theoretical background or qualifications for the purposes of managing the holding [15]. The requirement of independent management of the holding significantly limits

the possibility of excessive concentration of lands in the hands of only one person, as independent management of the holding, although it is not defined in any Swiss regulatory act, requires that a person is able to decide on matters, which are important for the holding.

Similar protection may be seen in the case of inheriting the holding, in which the preferential treatment of heirs of the bequeathed working on the farm is significant.

V. UKRAINE

The basic deed which regulates the marketing of agricultural real properties in Ukraine is the Rural Code of the 1st of January 2002 [16]. According to this deed, agricultural lands may be a subject of general marketing only since 2007, with the provision that one entity may possess a maximum of 100 ha [17] until 2015. The introduction of this limit of the area is, in the limited scope, to prevent excessive speculation in lands and allow the development of family farms which ensure the livelihood of a farming family. In order to buy agricultural land in Ukraine the purchaser must meet several conditions: be a citizen of Ukraine, have agricultural training, experience of working in agriculture or operate in agriculture or, in the case of legal entities, hold the relevant documents which render the intention of undertaking an agricultural activity [18].

Also efforts in the scope of the appropriate regulation of the agricultural real properties lease have been made in Ukraine. The time period of the lease has been determined for from 5 to 50 years. The value of rent paid in cash or in kind cannot exceed 10% of the normatively specified value of the contract. Tenant has the right to transfer the right to lease or sublease the land with the consent of the owner of the land. The lack of the above-mentioned consent and the conclusion of one of the above-mentioned agreements conducted by the tenant is the basis for the lease agreement termination. In addition, the lease may be terminated in the cases strictly listed in the lease agreement or if the tenant arrears in the payment of lease for a period of at least 3 months [19].

The agricultural real properties used for the purposes of conducting farming holdings (the term family farm is not used, however when taking into account the way of the protection of people who manage farming holdings, it is similar to the protection system of people who manage family farms) are taken over to public ownership. The area of the formed holding cannot exceed 50 ha of the agrarian site and 100 ha of the general area, including the allotment garden [20]. The final dimensions of formed holdings are determined by the appropriate councils which take into account not only the characteristics of the environment of the area but also the possibilities of harnessing the property by other prospective owners. The newly formed holding cannot be divided. A farmer is released from charges for the land for a period of three years (no matter whether he is the owner or if he was only granted the right of use).

The transforming process of Ukrainian agriculture is

subject to continuous development. The beginning of the creation of the rural market will certainly be straightening and adapting to the changing economic situation [21].

VI. ITALY

In Italy, by the means of the Act of the 5th of March 1948, the Agency of Peasant's Property Forming (Casa Per La Formazione Della Proprieta Contadina) [22] was brought into existence for the needs of the land concentration in family farms. The main legal instrument of creating the agricultural property is the sale contract subject to property rights, concluded by the agency and the purchaser of the agricultural real property [22]. The title deed accrues to the above-mentioned agency until the purchaser settles the full debt for the purchased land [22].

One of the interesting solutions, which are also present in Germany, is the ban on the sale and division of an agricultural real property which has been purchased from the agency within the period of 5 years from the date of the purchase. In return for compliance with the ban, purchasers receive amenities, such as tax exemptions, in management from the state. The purchasers which are allowed to buy agricultural real properties from the agency are only the farmers who cultivate the land themselves, for whom work on a farm constitutes the main source of income. As in Spain, the Italian civil code introduces the minimal areal unit (minima unita colturale) for all of the transactions which results in the division of holdings [23]. However, it shall be noted that, contrary to Spain, the Italian legislator has not determined this minimal standard by the means of the quantitative indicator. Italian legislation also does not recognize the term of the maximum areal standard. The land which is purchased from the state must be personally cultivated by the farmer. As in other European countries this entry shall be interpreted as means of counteracting against the concentration of large amounts of lands owned by one entity. Italian legislator has made an attempt to define the immediate producer (tenant) [24]. It shall be highlighted that this term was evolving over time in 1960 [25], and then through the incorporation of this provision in 1942 [26] a person, who manages his own holding on the basis of his and his family's work, was considered a direct producer. The art 1647 of the Italian Civil Code adds the areal maximum to the above-mentioned definition, which cannot be exceeded by the holding which belongs to a direct producer. In the Act no. 203 of the 3rd of May 1982, the requirement of the direct producer's and his family's own work was changed to more than 1/3; the producer's and his family's work is calculated in relation to the works which are necessary for the farm.

Like French SAFER or Spanish IRYDAS, so in Italy the tasks of restructuring the lands are conducted by special institutions called Enti di Sviluppo Agrario. These institutions were granted a number of competences such as joining and expropriating holdings by the means of the Act no. 948 of the 23rd of June 1962 in order to improve the agrarian structure of

family farms. These regulations are aimed to prevent such a fragmentation of holdings, which would reduce the area below the minimal agricultural unit. Taking into account the lack of a clear settlement as to the term meaning of this terminology, the problem how the above-mentioned institutions are to achieve their objectives arises.

VII. CONCLUSION

Today, the legislations of different European countries are trying to reduce the excessive concentration of large amount of land in the hands of one entity through different regulations, using also the solutions which are contained in the agricultural real property lease contracts. The modern legislation, with some exceptions such as those in Ukraine, Denmark and partly in France, is moving away from strict numerical limitations on the arable land area. Solutions which are used more often are those, which take into account the family-like characteristics of the holding and the requirement of managing the holding by the farmer alone. Such solutions, which have been applied in Germany, Austria, partly in Spain or Italy (where rather the attempts are made to counteract against holdings fragmenting) are becoming much more effective. The only condition for the effectiveness of these solutions is efficient, impartial and reasonable operation of the authority issuing the permission for the conclusion of the particular transaction in the marketing of agricultural real properties. Such a solution corresponds to the challenges of the modern world. Only the regulation which allows to take into account all of the circumstances such as holding profitability, its geographical location, economic conditions, competitive environment, the situation on the local, national and European market and many other factors important for the evaluation of transactions, will allow the rational management of land.

Of course there will be a limit (approximate), which could not be exceeded even by the administration. The development of family farms in European countries indicates that this part of agriculture will become the most important sector in the future, if it has not already happened. Taking care of the development of these holdings through the introduction of clear rules for competition, including the real property lease contract, which will be excluding the possibility of speculation in lands and prevent the creation of extensive holdings appears to be proper solution, if not the most appropriate. The requirement of personal management of the holding, even at a very broad interpretation, limits to a large extent the concentration of lands in the hands of only one entity. It shall be also noted that most of the legislation understands the possession as both real property ownership and lease.

While trying to present a brief outline of provisions of the selected European countries we come to the conclusion that the European legislation attempts to counteract against irrational holding divisions as strongly as in the case of excessive concentration of lands owned by one entity. Modern

family farm shall be of a size which ensures the farmer and his family a decent (average, sufficient) income. Its excessive reduction will be the basis for the loss of livelihood for the farming family.

The creation of special companies (offices) which are to dispose of not only the national land, but which also are entitled to influence the structure of land stretch appears to be the most appropriate solution. Reasonably designed public authority entitled to control the marketing of agricultural real properties (not only national, but also private) can certainly contribute to improving the profitability of family farms. While constructing the system of controlling the agricultural real property marketing one cannot forget about previous land holders' acquired rights. At the same time, the process of giving consent to particular transaction shall be constructed in such a way that it does not excessively prolong investment processes.

Briefly described legal solutions which are applied in different European countries of different agrarian structure give only one answer. In none of the European countries is the marketing of agricultural real properties fully free and deprived of public administration control. Two basic areas: first, the most important one, avoiding the excessive fragmentation of family farms and second, implemented in specific cases, which prevents the occurrence of extensive holdings, become the determinant of European regulatory directions.

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