

*CIVIL LAW*

Reviewing the civil legislation of 1968 it is necessary to mention first of all three acts concerning agricultural problems. At the foundation of enacting these acts there was a common leitmotif aimed at an improvement of relations in agricultural production and raising the level of that production. The acts in question were:

1) the law of 24th January 1968 on integration and exchange of farm land (Journal of Laws No. 3, item 13) superseding the law on land integration of 31st July 1923 (Journal of Laws No. 92/1927, item 833 with subsequent modifications) order of the Minister's Council of 7th March 1928 concerning changes in decisions on land integration during land allocation, decree of 14th April 1948 on the adjustment of principles of land integration provided for in the law of 31st July 1923 on land integration to the conditions brought about by the war (Journal of Laws No. 21, item 144) and the decree of 16th August 1949 on the exchange of farm land (Journal of Laws No. 46/1962, item 226). Stipulations of the latter have remained in force only with regard to land integration carried out by the Ministry of Forests and Wood Industry and with regard to exchange of forests and forest land;

2) the law of 24th January 1968 on forced redemption of real estate composing a part of peasant farms (Journal of Laws No. 3, item 14);

3) the law of 24th January 1968 on pensions and other benefits for peasants submitting their real estate in favour of the State (Journal of Laws No. 3, item 15).

The a/m acts cover a complex problem. Their stipulations reach beyond civil law regulations. Nevertheless, their norms and particularly the laws mentioned under item 2 and 3 above are closely connected with the civil law problems and bear an important influence on relations in the domain of the civil law.

As far as the law on integration and exchange of farm land is concerned, it is enough to signalize it, mentioning that implementing regulations to that law have been issued by the order of the Council of Ministers of 1st March 1968 on the implementation of some regulations of the law on the integration and exchange of farm land.

The next two laws, however, and more important implementing regulations to them call for much more detailed description. Particularly worthy of attention are:

1) Order of the Council of Ministers of 1st March 1968, concerning the implementation of some stipulations of the law on forced redemption of real estate composing a part of peasant farms (Journal of Laws No. 8, item 45);

2) Order of the Council of Ministers of 1st March 1968, concerning pensions and other financial benefits on account of transferring real estate in favour of the State, the procedure of taking over such real estate and procedure of applying pre-emption as regards farm buildings (Journal of Laws Mo. 8, item 46);

3) Order of the Minister of Agriculture of 26th March 1968, concerning principles and procedure of auctioning real estate constituting a part of peasant holdings (Journal of Laws No. 11, item 57);

4) Order of the Minister of Agriculture of 26th March 1968, concerning classification of farm holdings to categories of low level of production due to default and concerning the determination of indispensable outlays to restore fertility of the soil (Journal of Laws No. 11, item 58);

5) Order of the Minister of Agriculture of 26th March 1968 on the implementation of some stipulations of the law on pensions and other benefits for peasants transferring their real estate in favour of the State (Journal of Laws No. 11, item 59);

The law on forced redemption of real estate constituting a part of peasant farms has created possibilities of forced change of ownership of real estate, if its owner did not manage it properly which he had been obliged to do by art. 140 of the civil code, readings i.a. that "within the limits defined by laws and principles of social co-existence the owner may, excluding other persons, make use of things according to the social and economic character of his right...". Neglecting his farm holding as its owner he makes use of his right contrary to its social and economic character. The law preconditions the forced redemption on low level of agricultural production through default. The criteria as to which peasant farms may be regarded as being in default have been defined by implementing order to the law of 26th March 1968 — published in the Journal of Laws No. 11, item 58 — cited above under 4. Paragraph 1 of this order reads that peasant farm is regarded as one of low level production as the result of default, if during the past three years: a) the arable land has not been utilized wholly for agricultural purposes, b) the crops were lower by one third than the average crops from similar soil in the same village, c) the population of live-stock was lower than provided for by the order.

Motions for classifying individual farms as those of low level production as the result of default are lodged by praesidia of rural community people's councils with the appropriate organs for agricultural problems at the praesidium of district people's council concerned. The said organ appoints a group of 3 specialists who inspect the farm concerned and make a report in which they give their opinion. On the basis of this opinion the organ for agricultural problems at the Praesidium of district people's council draws a motion and submits it for decision to the praesidium of the given district people's council. If the praesidium considers that the farm in question should be recognized as one of low level production as the result of default, the praesidium of the district people's councils issues the decision on taking proceedings aimed at forced redemption of the real estate. Art. 2 of the law provides for effecting the forced redemption by auctioning it, excluding from the auction the farm buildings and a small plot of land of the area of 0.2 hectare. According to the stipulation of § 1 of the order of the Minister of Agriculture of 26th March 1968 (Journal of Laws No. 11, item 57) the decision of the praesidium of the district people's council should define the real estate or its part, its area and the name of its owner. At the motion of the organ for agricultural problems of the praesidium of district people's council concerned, the state notary public makes entry into the register of perpetual tenure of instituting proceeding directed toward forced redemption by auction. This entry has the effect of seizure of the real estate (§ 1, section 3 of the said ordinance). The implementing regulations of the cited ordinance include detailed principles concerning the determination of the opening price and procedure of auction (§§ 2 - 6). According to art. 3, section 4 of the law, the praesidium of the district people's council has the right to pre-emption of the real estate subject to forced redemption. The praesidium may avail itself of this right, if the real estate to be auctioned is necessary for development purposes of state farms. The right to pre-emption is materialized within one week from the day of auction through drawing up the decision which is handed over both to the buyer and to the former owner of the real estate (§ 9 of the order published in the Journal of Laws No. 11, item 57). The Praesidium of the district people's council concerned has also the right to buy the real estate at the opening

price, if the auction did not take place due to the lack of bidders and the real estate is necessary for development purposes of agricultural units of socialized economy. On the basis of the final decision of the praesidium of the district people's council on the pre-emption (or redemption of the real estate at the opening price) the real estate becomes the property of the State Treasury. This fact is entered into the register of perpetual tenure. Mortgages and other rights of the former owner are deleted from the register except the land servitudes and other encumbrances determined by law (art. 3, 11 and 12 of the law).

The law of 24th January 1968 on pensions and other benefits for peasants transferring their real estate in favour of the State (Journal of Laws No. 3, item 15) has created for owners of real estate, provided its area is of at least 5 hectares of arable land composing a part of a farm, possibilities of transferring the real estate in favour of the State in exchange of a pension and other benefits (art. 1 and 3 of the law). According to art. 1, section 3 of the law and § 16, section 1 of the order of the Council of Ministers of 1st March 1968 (Journal of Laws No. 8, item 46) the real estate composing a part of a farm may be transferred in favour of the State by independent owner of the farm, provided he proves that he owns the real estate as legal successor of the owner evidenced in the register of perpetual tenure or if there is neither register of perpetual tenure nor any dossier on that estate but there is evidence that there will be no claimants to that real estate. The real estate burdened with life estate may be transferred in favour of the State only upon consent of the persons concerned (art. 1, section 2 of the law). It is possible to transfer in favour of the State the whole of the real estate or its part, provided its area is not smaller than 5 hectares (art. 1, section 1 of the law). The State may refuse to take over the real estate if it is unable to ensure conditions for making the estate properly productive (art. 2 of the law). A peasant transferring his real estate in favour of the State in exchange for pension is authorized to retain the farm buildings of the real estate. In this instance the buildings become a separate title of ownership than the real estate. By this fact the law has created in the Polish legislation an exception from the principle *superficies solo cedit* (art. 4, section 1 of the law and § 1 2, 3 and 4 of the order of the Council of Ministers). However, after the death of the peasant transferring the real estate in favour of the State, the title of ownership to the building passes on to the State, if they have not been disposed of legally at an earlier time *inter vivos* (art. 4, section 1 of the law). In case the buildings composing a part of the real estate either taken over or to be taken over by the State will be necessary for proper development of the real estate, upon consent of the peasant the State may take over the buildings too. In exchange, however, the State is obliged to ensure to the peasant : a) tenancy of an apartment and other accommodation meeting his requirements, either in the buildings taken over or in any other buildings, free of charge for life, b) pay adequate compensation whose amount and mode of payment is determined by the order of the Council of Ministers of 1st. March 1968 (Journal of Laws No. 8, item 46, § 1). Special entry is made in the register of perpetual tenure for the buildings retained by the peasant as his ownership. If the owner of such buildings intends to sell them, he is obliged to inform the organ for agricultural problems of the praesidium of a district people's council concerned about his intention, due to the right of the State to pre-emption, reserved in the law (art. 4, section 4 of the law and § 3 of the order of the Council of Ministers). In exchange of the real estate taken over by the State the latter ensures disability pension to the peasant, if at the time of transferring the real estate in favour of the State he is at least 40 or is an invalid (art. 5, 6, 7 of the law and § 7, 8, 9 of the order of the Council of Ministers). In case a peasant transfers only a part of his real estate in favour of the State he is liable to receive for it an equivalent under the form of monthly payments to his account at the Agricultural Bank, amounting to 50% of the pension he would be paid, if he transmitted the whole of the real estate to the State (art. 14 of the law and § 14 of the order of the Council of Ministers). The funds paid in

favour of the peasant's account to the Agricultural Bank may be utilized exclusively for investment purposes (art. 14, section 3 of the law). At the request of the peasant the equivalent for the part of the real estate taken over by the State may be paid to him in a lump sum, if he buys live stock or slaughtered cattle or pigs or starts construction of new buildings or initiates repair work of the existing buildings, which is necessary for rational husbandry (§ 7 of the order of the Minister of Agriculture — Journal of Laws No. 11, item 59). The aim of outpayment of the equivalent under the form of a lump sum is to improve productivity level of that part of the real estate which still belongs to the peasant. The State takes over real estate from peasants in exchange of pension if it is mortgage-free, except the land servitudes which have been recognized as indispensable and except other burdens arising from regulations of the law (art. 16 of the law). The change of ownership of the real estate in favour of the State and opening of a new entry in the register of perpetual tenure for the building constituting a separate title of ownership than the real estate, is made in the register of perpetual tenure on the basis of the final administrative decision on taking over the real estate in favour of the State (art. 19 of the law).

The cited law has also modified some stipulations of the law dated 28th June 1962 on taking over some real estates for making them productive or taking real estate over in favour of the State and on the pension scheme for former owners of the real estate (Journal of Laws No. 38, item 166). The heading of the law of 1962 has been also changed. Now it reads: "... on taking over real estate in favour of the State for debt in arrears."

The Minister of Municipal Economy published two announcements in 1968. They were:

1) of 3rd September 1968 on the uniform text of the law of 22nd April 1959 on repairs, reconstruction, finish and superstructure of buildings (Journal of Laws No. 36, item 249);

2) of 3rd September 1968 containing the uniform text of the order of the Council of Ministers of 4th October 1960 on limits of deposit payments and conditions of renting apartments in new buildings and in reconstructed buildings (Journal of Laws No. 36, item 250).

In the domain of civil procedure, worthy of mentioning is the order of the Minister of Justice of 9th March 1968, concerning the scope of activity of court executive officers (Journal of Laws No. 10, item 52) issued on the basis of art 772, 855 § 2, 865 § 3, 868 and 947 § 2 of the civil code procedure of 1964.

The order is composed of 5 sections.

Section 1 containing preliminary regulations reads i.a. that court executive officers perform their activities in person, with the exception of cases in which they are relieved from this duty by legal regulations. In the latter case they are authorized to order carrying out some activities by an apprentice, for example to carry out execution in financial claims not exceeding the amount of zlotys 5,000 (except execution against real estate).

Section 2 contains general regulations, common to individual types of executions and concerning i.a. the authority of the court executive officers, their exemption, carrying out provisional court ruling, drawing up confiscation protocols, the course of action in case of necessity to charge a fine and other details connected with carrying out execution opened at the motion of a creditor, *ex officio* or at the motion of the authorized organs.

Section 3 enumerates the actions of the executive officers in case of executing financial claims. This section consists of 5 chapters. The first of them (§§ 60-107) regulates questions concerning executions against real estate. It should be pointed out that according to § 69, section 1, the court executive officer is obliged to offer the unused confiscated movables, being subject of commercial turnover, to the organization of socialized commerce concerned and to determine with it the conditions of sale, the time and place as well as the manner of transferring the movables.

If a confiscated object is of historical value, the executive officer reports this fact to the voivodship conservator of historical monuments concerned and according to his decision offers these objects for sale to state museums, libraries, archives or enterprises dealing in such objects.

The order regulates in detail the procedure connected with the confiscation of fur bearing animals, animals and food products covered by the system of contract deliveries or obligatory deliveries (§§ 74 - 77) and their sale (§§ 78 - 79).

Paragraphs 80- 105 regulate problems connected with auctions and their procedure.

Chapter 2 (§§ 108-114) deals with the problem of execution and the remuneration for work.

Chapter 3 contains regulations pertaining to executions from bank accounts (§§115-117) and chapter 4 (§§ 118-121) covers regulations concerning executions against other claims and other titles of property. Chapter 5 deals with the executions against real estate (§§ 122 - 150).

Section 4 also consists of 5 chapters and deals in detail with executions. Chapter 1 concerns executions of financial claims, including eviction from dwelling apartment, exempted from the regulations of house renting law (§§ 151 and 152), executive officer's action in case of alteration the fine to arrest (cf. art. 916 and 1056 of the civil code procedure).

Chapter 2 regulates executions against units of socialized economy. According to § 159, for example, the executive officer carrying out execution on the basis of art. 1063 § 2 and § 3 of the civil code procedure should confiscate first of all such property, the confiscation of which will not hinder too much the debtor's possibility to carry on his economic activity. Carrying out execution against a unit of socialized economy, which is not a state organizational unit, the executive officer is authorized to confiscate fixed assets whose unit price at the moment of purchase or production exceeds zlotys 3,000 and which may be made use of for over the period of 1 year. Such confiscation, however, is possible only when the executive officer states that the execution of other property is ineffective (§ 160).

Chapters 3 and 4 deal with the execution of alimonies (§§ 169 and 170). The last chapter covers the execution of the order to take away a person from under the parental authority or from under the authority of the guardian (§§ 171 and 172).

Chapter 5 contains the provisional and final regulations, according to which the said order published on 10th April 1960 entered into force 14 days after its announcement. On the day of its entry into force the following orders were repealed:

- 1) order of the Minister of Justice of 26th October 1962 on the activities of court executive officers (Journal of Laws No. 58, item 284),
- 2) order of the Minister of Justice of 15th December 1932 on the procedure at describing and evaluation of real estate (Journal of Laws of the year 1932 No. 114, item 947 and of 1936 No. 4, item 36).

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