

*LEGAL MEANS TENDING TO ELIMINATE THE PROCESS OF
DETERIORATION OF ECONOMICALLY NEGLECTED AGRICUL-
TURAL HOLDINGS*

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With the prevailing individual small farms agricultural system in Poland, a certain number of farms have considerably decayed, they are mismanaged and have a very low efficiency. The owners of these farms fully or partly fail to implement their obligations towards the State for various reasons, such as old age, disablement, ignorance of modern husbandry, lack of farm buildings, natural calamities etc. Most of these farms are deficient in manpower and machinery. Frequently the said disadvantages cannot be overcome in spite of special aid granted by people's councils to the farmer. Such aid takes various forms: putting off the payment of debts, giving credits to be used for current or capital expenditure; practical help in farming (for instance, the agricultural circles perform all the tillage and harvesting operations at the right moment); communal co-operative saving banks ensuring credits to pay for tractor services; granting credits and building materials for repair works and construction of new farm buildings; mutual assistance and co-operation of farmers to improve decaying farms in their village; instructions given by agronomists and agricultural experts (prompted by the rural community people's council, the Committee of National Unity Front, and by socio-economic organizations in the village) advising how to intensify production under given circumstances, what contracts to conclude with the government for the delivery of agricultural produce so as to speed up good returns, or how to increase the production of livestock.

In the public and economic interest steps had to be taken to solve the problem which naturally was causing anxiety of the people, particularly in the country. One of such measures is the Pensions and Other Compensation for Farmers Ceding Real Estates to the State Act (Jan. 24, 1968, Journal of Laws No. 3, item 15), hereafter referred to as the Pensions Act. The Act repealed and re-formulated in more

detail the solutions of the problems previously regulated by Chapter I (Art. 1 - 30) and Art. 37 of the Taking-over of Certain Real Estates in Order to Bring Land under Cultivation and to Cede the Right of Property to the State, and Pensions for Ex-owners of Such Real Estates Act (June 23, 1962, J. of L. No. 38, item 166). The Act of 1968 also amended the title of the Act of 1962 to read: "The Taking-over of the Right of Property in Real Estates by the State for Overdue Payments".

The basic principles of transferring the right of property in real estates cover a number of possible situational variants. Thus, the farmer who has reached a pensionable age (i.e. 65 years for a man, and 60 years for a woman), or who has been classified as an invalid of group I or II, can cede to the State the right of property in the whole of his farm which must represent not less than 5 ha of arable land. When ceding a real estate bigger than 5 standard ha, the farmer is given in return a lifelong monthly pension amounting from zł 800 to 1200, depending on the size and quality of the land. When a given 5 ha of arable land is not an equivalent to 5 standard ha, the farmer is given a pension proportionally reduced, as stipulated in an order to be issued by the Council of Ministers. The amounts of pensions correspond to average pensions due to workers with average earnings, employed in socialized enterprises.

The principle that the area of arable land of the farm being ceded should be not less than 5 ha was warranted by particularly unfavourable economic consequences on a national scale of larger farms being mismanaged due to the shortage of manpower. On the other hand, the Order of the Council of Ministers (March 1, 1968, J. of L. No. 8, item 46) re. Pensions and Other Payments in Virtue of Real Estates, the Right of Property in Which Has Been Transferred to the State, Procedure to Be Followed in Such Cases and the Exercising of Pre-emption With Reference to Buildings, stipulated that the amount of monthly pensions when the farm is below 5 standard ha depends on its actual area expressed in standard ha: the total amount of pensions to be paid during the pensioner's lifetime should correspond to the value of the real estate ceded.

There are numerous agricultural holdings — particularly in the eastern and central provinces — the title-deed of which has not been made up-to-date, but which in case of mismanagement ought to be taken over by the State with pensions and other compensations given in return. In this connection the Pensions Act allows to take over real

estates from actual holders who have proved that they are rightful heirs to the former proprietors.

The Pensions Act states the rights of co-owners of real estates ceded to the State to be granted pensions and other compensations, the amount and discharge of which depend upon the age of each co-owner and his share in the joint property.

It has been found that most farmers who cede their real estates to the State are anxious to retain the buildings and a plot of land for personal use. Consequently, the Pensions Act ensures the farmer who cedes his farm, provided he has reached a pensionable age, or is an invalid, the free of charge, lifelong usufruct of a plot of land up to 1 ha. Eventual co-owners of the real estate enjoy the usufruct of one plot only. The farmer who either resigns his usufruct with reference to the plot, or is destituted thereof, is entitled to have his pension permanently increased by an extra sum proportional to the area of the plot concerned.

The correspondence between the area of the plot and the area of arable land ceded by the farmer is in keeping with the general principle, adopted by the Pensions Act, according to which the amount of payments depends on the size of the real estate ceded.

To allot the plot in the most advantageous manner for both the usufructuary and the transferee, the Order issued by the Minister of Agriculture (March 26, 1968, J. of L. No. 11, item 59) re. the Implementation of Certain Regulations of the Pensions and Other Compensations for Farmers Ceding Real Estates to the State Act, adopted the principle that when it is disadvantageous to isolate such plots from the real estates ceded by the farmers, these should be taken from available State-owned land.

The cited Order reduces the interpretation of the "economic" management of the plot to certain basic requirements (i.e. a full agricultural use and proper cultivation of the plot), making allowance for practically limited possibilities of the usufructuary in this respect (§ 3.1).

As a rule the farmer can keep ownership of the buildings which are part of the real estate ceded to the State. Under the Pensions Act such buildings and the land are considered separate objects of the right of property, but upon the farmer's death they pass to the State. Moreover, the State has pre-emption regarding such buildings. The State can also — with the farmer's consent — take over buildings if these are indispensable for the cultivation of the land ceded. In such a case the farmer is ensured a free of charge, lifelong usufruct of the

habitable and farming area corresponding to his needs, as well as a pecuniary compensation, as stipulated in the cited Order of the Council of Ministers (March 1, 1968).

For compensation purposes the Order classified buildings into two basic groups according to their value (i.e. up to, and above zł 100,000) with two corresponding compensation rates. The compensation takes the form of an increased pension to maintain a uniform fixing and payment procedure throughout.

Regarding the execution of pre-emption with reference to buildings which are considered a separate object of the right of property from that of the land, the Order — to simplify the procedure — stipulates that all the actions will be undertaken by the competent agency for agriculture, reserving for the praesidium of the district people's council only the decision if pre-emption is to be exercised, thus safeguarding the right policy in this respect.

The amounts due for the buildings are paid in such a way as to ensure accommodation to the farmer, and — on the other hand — to prevent overspending for this purpose in one year.

Under the Pensions Act, the farmer who has reached a pensionable age, or who has become an invalid, is entitled to services in kind like pensioners under the general pensions scheme.

Assuming that the farm has — as a rule — been acquired jointly by husband and wife, the Act stipulates that each of them is entitled to half the pension due for the farm ceded. If one of the spouses dies, the other one is entitled to a pension amounting to 75 per cent of the original full pension.

Under the Pensions Act, agricultural holdings (of not less than 5 ha of arable land) can be ceded to the State even if their owners neither have reached a pensionable age nor are invalids. Thus the Act deals with the situation in which some farm owners, able to work, are willing to give up their landed property because they have taken up other jobs (farmers-workers). This group of farm owners usually have farm buildings in fairly good condition, but they do not run the farm properly.

A monthly compensation granted to this group of farmers for the farm ceded depends on the age of the person concerned and amounts to 1/6 to 1/4 of the full pension. The monthly compensation is 1/5 to 1/3 of the full pension if the farmer takes a job in a State farm, this being an incentive for working at State farms which are deficient in manpower.

Besides the pecuniary compensation, the farmers able to work who cede their landed property to the State under the Pensions Act,

have their employment period required for being granted an employee's pension calculated in such a way that the period of work in agriculture after reaching the age of 16 is included thereto, provided they have worked in a socialized enterprise or a workshop not less than for two years after ceding the farm to the State.

The amount of the monthly compensation for the farm taken by the State is added to the basis by reference to which the employee's pension is calculated. If the pension thus reckoned is lower than the full pension due to the farmer in a pensionable age or an invalid ceding landed property to the State, the farmer can choose either pension.

It has been noticed that some owners of larger agricultural holdings, being unable to cultivate the whole area of their land due to old age or lack of manpower, are interested in reducing the size of their farms. Under the Pensions Act in such cases the State can — at the farmer's request — take over a part of his real estate, which, however, should not be less than 5 ha of arable land. For the ceded part of his landed property the farmer is entitled to a compensation in the form of a monthly remittance to his account at the Agricultural Bank, amounting to 50 per cent of the pension due to the farmer who has ceded his whole farm to the State. Following the general principle that the area of 10 ha of arable land is the upper limit for determining the amount of compensation, the cited Order of the Council of Ministers adopted a similar principle with regard to fixing the upper limit of the total amount of monthly remittances to the bank account for the ceded part of the landed property (Art. 14.2 of the Act): this should not exceed the value of 10 standard ha. The means deposited at the farmer's bank account can serve exclusively for capital expenditure.

While determining the basis for calculating the amount of a compensation for the farm (fully or partly) ceded, the Act takes into account the farmer's liabilities to the State by proportionally reducing the area of the landed property ceded, as expressed in standard ha.

On the other hand, if the fertility of the soil in the farm being taken over has deteriorated due to the owner's negligence, the calculated area of arable land will be reduced by the equivalent to what is required to restore its productive power to the soil. The introduction of the said principles, which markedly affect the amount of the compensation, aims at marking the farmers run their farms properly, and in case of mounting difficulties in management, it will

induce the farmers to cede their real estates to the State before their utter ruin.

The said Act provides the owners of real estates ceded to the State with practically sufficient income in case of their disablement for work. Its implementation promotes a planned and economical management of all the grounds which under the present conditions are not, or will not be, properly utilized for agricultural purposes.

However, the State can decline offers of real estates when considering it impossible to ensure conditions for their proper management.

It is worth noting that the praesidia of a number of provincial people's councils issued recommendations not to take in return for pensions the farms of those proprietors (actual holders) whose successors are young farmers working on these farms (not infrequently raising loans for their agricultural intensification), as the said Act does not *expressis verbis* protect the interests of such young farmers. The point is not only to ensure old farmers a quiet life, but also to secure their successors' future.

When the Pensions Act and its implementary orders are carried into effect, the automatic operation of regulations in the relevant situations and with regard to the State-farmer relationship is eliminated, the farm owners being given a large and practical range of decisions what to do when they are unable to run their farms economically through no fault of theirs.

In this sort of cases the party concerned co-operates in shaping administrative decisions in all the procedural stages to a varying extent and in different forms, as the case may be. This co-operation plays an important role because it simplifies many actions of the administrative body and better ensures that its decisions are carried out of the party's own free will.

The decisions issued in these matters evince a distinct trend and display perceptible qualitative changes increasingly marked in the present stages of the agricultural reconstruction proceeding in this country. The trend consists in the taking into account of the party's interests to an ever-growing extent, simultaneously bringing this into harmony with the public interest, by means of one-sided acts combined with an ever larger co-operation of the party concerned in the formation of administrative decisions.

The form of action — described herein — by means of an administrative decision initiated by the party concerned, mainly with reference to economically weak and neglected farms, shows how the formative role of the law within the State control of agriculture can

be perfected also by improving the manner in which the law is implemented.

It follows that a better legislative technique, codification, systematization of regulations etc., are not the only ways of increasing the role played by the law and of its improvement.

CONCLUSIONS

The legal measures discussed in the present paper evince a radical change in the treatment by the State of the basic and indispensable means of agricultural production i.e. land. They emphasize the socio-economic purpose of land as all-national wealth, and indirectly impose specific duties on the farm owners.

It is worth noting that the legal interference by the State into the manner of land utilization has been practised for a long time in many European countries. For instance, in England for the last 20 years there has been a legally enforceable duty fully to cultivate land and to use the technique of field-crop production, sanctions including a compulsory purchase of land. The Agricultural Code in France, in force since 1955, introduced similar principles.

The legal measures discussed herein enable the State actually to interfere in case of a flagrant neglect by the farmer of his duties. This very possibility becomes a strong impulse to undertake remedial measures in order to improve an economically weak farm.

And this is the very idea behind the said legal measure. The point is predominantly to utilize all the land more efficiently and more economically, to arouse interest in the intensification of production, and not to accelerate the process of giving up farms.

The compulsory purchase is merely an extreme measure, applied when all the remedial measures have failed.

The legal protection of the basic object in agricultural production, i.e. land, is a preventive measure against waste, and it promotes good husbandry.

The farmers who — in spite of their good will and technical means — can no longer cope with the hard work on their farms due to old age or lack of successors, are given legal facilities of ceding their real estates to the State in return for pensions. The point is to prevent such farms from deteriorating, and to encourage such farmers to take an early decision to cede the land in return for a pension and other compensations.

However, let us conclude by pointing to the fact that the appearance of farms without successors, economically weak and burdened with debts, is a structural phenomenon. Its causes are — to a large extent — objective. In the generally favourable conditions prevailing in agriculture in People's Poland, they are a relatively stable phenomenon. The appearance of such farms should be considered one of the first symptoms of the process which in the future will finally bring about an organization of the agricultural production different from the one prevailing in this country today.