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## INTEGRATION OF AGRICULTURAL PRODUCTION IN POLISH CONSTITUTIONAL SYSTEM

### 1. TRADITIONS AND CHANGE IN POLISH AGRICULTURAL LAW

Polish agricultural law has been developed since Poland became a Member state of the European Union. Permanent implementation of the rules of European law resulted in legal regulations strictly connected with that law. In particular, it refers to the legal mechanisms of agriculture, in the light of intervention policy of the European Union in the regional sphere. These problems are related to structural legislation (modernization of farms or development problems of country areas and country infrastructure)<sup>1</sup>.

Polish agricultural law is not rooted in civil law and is connected more with the regulations of public law, similarly to the German system. But contemporary agricultural law is rooted partly in private law and partly in public law. So both the relations between independent subjects are regulated and the relations between public principal and subordinated subjects. The essence of the agricultural law is related to agricultural activities and is regulated in private (civil) law; whereas public law specifies the aims and conditions of performing these activities<sup>2</sup>.

Agricultural law includes many problems regulated by civil methods: turnover and succession of farms, turnover of food, conclusion of contacts characteristic for agriculture (lease of farm land, life annuity, agreement with the follower, contracting of agricultural land, agreement of direct surcharges). Civil methods are also adequate for responsibility for hazardous products. Norms of civil law not only support economic development and make business more liberal; but they also let farmers and entrepreneurs take part in agriculture and establishing of civil relations. It can be concluded that the condition of Polish agricultural law depends not only on the state but also on different subjects – participants of agri-

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<sup>1</sup> P. Czechowski, M. Korzycka-Iwanow, A. Niewiadomski, *Evolution of Agricultural Legislation*, [in:] *Agricultural Law*, ed. P. Czechowski, Warsaw 2011, p. 43–44.

<sup>2</sup> R. Budzinowski, *General Problems of Agricultural Law. Transformations of Legislative Bases and Doctrinal Concepts*, Poznań 2008, and its bibliography.

cultural and food markets – referred to as stakeholders. In addition, we are at the stage of developing the assumptions of new codification of civil law<sup>3</sup>. Special attention will be given to agricultural regulations, including the regulation and placement of the turnover principles of agricultural real properties and farms<sup>4</sup>. The following arguments are used to support the turnover of agricultural real properties in the Civil Code:

- completeness principle of the Civil Code;
- social values and range of these regulations;
- easier interpretation (breaking ties with the Civil Code will necessitate referring to other regulations – which causes interpretation difficulties);
- tradition – a factor not to be underappreciated.

The requirement associated with the idea of free market is that legal relations between legal entities should be based on civil contracts. For example, the so-called transitive periods connected with the membership of Poland in the European Union will soon end. Consequently, no more permits to purchase real properties, including agricultural properties, will be required from EU foreigners. So the turnover will be less and less dependent on domineering instruments.

Agricultural law is strictly connected with administrative law. It refers to such fields as water law, mining law or construction law. Such regulations determine the conditions of running agricultural activities, and also the tasks of public administration initiated in agriculture. These regulations account for the characteristics of agriculture but they also have their specific features. A good example is the system administrative law (the operations of agricultural agencies – Agency of Agricultural Real Properties, Agency of Restructuring and Modernization of Agriculture, Agency of the Agricultural Market) or administrative procedures in agricultural cases – the modification of procedures of the Code of Administrative Proceedings, aimed at the simplification of direct payments. So the agricultural law is largely based on administrative legal regulations; this is confirmed by the procedures of surcharges, permits, concessions, certificates obtained as administrative decisions. The next examples: the production amount is granted in the administrative procedure, administrative authorities are required to take part in awarding structural pensions.

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<sup>3</sup> A visible result of the process is *The Green Book. Optimum Vision of the Civil Code in the Republic of Poland*, ed. Z. Radwański, Warsaw 2006. See also: Z. Radwański, *Draft Civil Code. Book One. Report of the Discussion at the Civil Chamber of the Supreme Court*, „Przegląd Sądowy” 2010, No. 2, p. from 104.

<sup>4</sup> See e.g.: A. Lichorowicz, *Remarks on the Placement of Regulations on Trading with Agricultural Land in the System of Polish Law (Comparative Study)*, „Przegląd Prawa Rolnego” 2008, No. 2, p. 29–49; also: A. Lichorowicz, *Legal Regulation of the Turnover of Agricultural Land – Assessment of the Present State, de lege ferenda Postulates*, „Przegląd Legislacyjny” 2009, No. 1–2, p. 11–22.

It is justified to state that the scope of obligations of farmers and the scope of tasks of public administration are determined by normative constructions, based on overlapping administrative and civil regulations.

## **2. DEVELOPMENT TRENDS IN AGRICULTURAL LAW**

The development of modern agriculture involves a trend to expand the scope of agricultural policy, evolving towards the policy of developing rural areas. The European model of agriculture is based on a general assumption that agricultural sector, apart the food production, performs also important functions in the environment protection and the development of rural areas. Following this concept, the agricultural policy is a part of the complex policy of the development of rural areas, including the production, social, cultural and environmental functions of rural areas. The basic element of this concept is its multifunctional character, expressed in the diversification of agricultural activity and economic activation of the development of rural areas. The essence of the policy is the promotion and support of complementary activity in agriculture, aimed at additional income (agro tourism, local craft and commerce, manufacture of souvenirs, conversion of buildings for non-agricultural purposes) and the creation of conditions of permanent and balanced development of rural areas (establishment of small and medium industry in the countryside, development of infrastructure, promotion of employment in services for agriculture).

The development policy of rural areas is addressed not only to farmers, but to all inhabitants of the country.

Special attention is drawn by the development concepts of modern agriculture to the development of agriculture consistent with the requirements of natural environment protection and the preservation of unique values of the country landscape. The balanced development of agricultural production is based on the desire to revive the traditional function of agriculture in the protection of natural environment. In the traditional understanding, environment protection was integrated with agricultural policy, but intense production methods deteriorated the environment and broke the historical balance between agriculture and environment.

The agricultural development trend supporting the environment protection is realized by the promotion of agricultural production consistent with the environment, including the creation of unique values of rural landscape and the preservation of the local cultural resources. The forestation of agricultural land is of special significance. Ecological agriculture is also supported.

We are responsible for the natural resources to future generations; hence the requirements related to environment protection are becoming stricter. This

involves considerable (public and private) expenses for the change of agricultural technologies, ecological education, marketing etc.

### 3. FAMILY FARM IN THE LIGHT OF ARTICLE 23 OF THE CONSTITUTION OF THE REPUBLIC OF POLAND

It is beyond any doubt that the starting point for the observation of the integration of agricultural production in Poland on the constitutional level is Article 23 of the Constitution of the Republic of Poland of 2nd April 1997<sup>5</sup>, stating that “The basis of the agricultural system of the State shall be the family farm. This principle shall not infringe the provisions of Article 21 and Article 22 of the Constitution” (Article 21 of the Constitution provides that “The Republic of Poland protects ownership and right of succession. Expropriation may be allowed solely for public purposes and for just compensation”; and, according to Article 22 of the Constitution, “Limitations upon the freedom of economic activity may be imposed only by means of statute and only for important public reasons”).

The social function of the Polish constitution, imposed by political choice, is not the description of the existing reality but also the shaping of this reality in future. Constitutional regulation, resulting from the leading role of the constitutional act in the Polish system of legal sources, can prejudice the admissibility of special or even specific statutory regulation of agriculture. To implement this function, it is necessary to refer to regulations stating the ownership and freedom of business activity, as the main pillars (along with solidarity, dialogue and cooperation of social partners) of the social market economy, on which the economic system is based. This reference assumes the existence of special legislature concerning agriculture. It can be specific legislature if important social interest is involved<sup>6</sup>.

The consequences of Article 23 of the Constitution of the Republic of Poland is a specific differentiation of farms that can be divided into family farms and other farms – production units, where no family character can be observed. The protection character of Article 23 of the Constitution determined the mutual relations between different types of the farms. A privileged position of family farms, being the work place of a farmer’s family, is guaranteed in comparison to non-family households. This division does not mean, however, that farms based on any other

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<sup>5</sup> Constitution of the Republic of Poland of 2<sup>nd</sup> April 1997 (Journal of Laws of 1997, No. 78, item 483 as amended).

<sup>6</sup> R. Budzinowski, *General Problems of Agricultural Law...*, p. 71; also: R. Budzinowski, *The System Factor of the Development of Agricultural Law*, „Przegląd Prawa Rolnego” 2007, No. 1, p. 27-42.

form of ownership (e.g. cooperatives) have no right to exist and no development perspectives. There is no doubt that every form of agricultural ownership is protected (except the purchase of land for profiteering and thesaurisation purposes). In the context of these remarks, the Constitution Tribunal adjudged that Article 23, in connection with Article 21 of the Constitution should not be interpreted as the basis of eliminating the rights of farm owners and compulsory formation of family ownership communities. A family farm, as a production unit, does not exist for itself but should be an effective economic form<sup>7</sup>. Only such households can be the base of the agricultural system of the state and a specific object of ownership; and public authorities are obliged to make the farms a “productive” form of economic activity<sup>8</sup>. The Constitution Tribunal has confirmed many times the admissibility of the introduction of specific regulations, if they are necessary to achieve the aims on which such regulations are based. The Tribunal accepts the differentiation of the legal situation of groups of subjects (e.g. successors) if the reason of the differentiation is the protection of a constitutional value. Such a value is the family farm and it can be the object of specific regulation; provided that modifications are not free but must be made for the practical implementation of the principle expressed in Article 23 of the Constitution.

The principle of the family farm shapes the agricultural system or even the system of the State. The family farm is certainly the element of the social market economy. This statement has its consequences. The State is obliged to establish law supporting family farms in economic, social and financial aspects; and to introduce legal regulations protecting the interests of the owners of such farms. The principle of the family farm should be “a sign-post and reference for all state authorities in their implementation of any tasks, duties and obligations”. In this context, the principle is a starting point, around which other norms of the legal system, developing the constitutional legal principle, ought to be integrated into a functional entity. The acceptance of the normative value of Article 23 of the Constitution leads to the reconstruction of a norm ordering: 1) to recognize that the family farm is the dominant type (in terms of quantities and production) of subjects carrying out agricultural production; 2) to prefer the dominant position of the family farm by different legal regulations, in particular tax and succession law.

In the analysis of Article 23 of the Constitution, one must raise a question about the function of this regulation intended by the law maker. Polish doctrine of agricultural law has not solved the problem, whether Article 23 of the Constitution of 1997 has a juridical function of the agricultural sphere, and its formula-

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<sup>7</sup> Judgment of the Constitution Tribunal of 31<sup>st</sup> January 2001 (P 4/99), OTK 2001, No. 1, item 5.

<sup>8</sup> A. Oleszko, B. Jeżyńska, *Agricultural and Alimentary Law. Lecture Outline*, Kraków 2003, p. 82; also: A. Oleszko, *Acceptance of the Family Farm as the Constitutional Basis of Polish Agricultural System (comments on the Constitution of 2<sup>nd</sup> April 1997)*, „Rejent” 1997, No. 5.

tions are guidelines for normal legislature and are binding directly for all citizens, authorities and institutions; or the regulation is a general clause, enabling free interpretation by law makers and law executors, even closer to an ideological manifest than to a strictly legal text<sup>9</sup>.

According to one of the opinions, Article 23 of the Constitution is norm of the programme, of very limited activity and static character, from the point of view of the agricultural system, making any influence on development and modernisation of family farms difficult<sup>10</sup>.

The theory of the static character of Article 23 of the Constitution is debatable. The very analysis of this constitutional is not satisfactory to the clear definition of its character. A complex look is necessary at the regulation binding during a definite period of time, at its political and legal context, characterised by dynamic legislation and frequent changes of legal regulations<sup>11</sup>. It can be stated that "Article 23 is a dynamic regulation, i.e. it requires continual adaptation of the legal system to the changing economic and international context"<sup>12</sup>.

The rightness of this theory can be confirmed by indicating special functions performed by the constitution for the state and law in general. Its task is, on one hand, the shaping of the stable image of the state, on the other hand, the definition of purposes and aims of its evolution, by legal acts passed to specify and develop the constitution. The stabilizing and the actuating function of the constitution can be established to determine the correctness of this process<sup>13</sup>. The stabilizing function of the constitution is to design a clear, legally binding picture of the state, principles of its legal system and principles of law making. And the actuating function is the determination of the purposes of the state and the stages of its development. As stated, "the actuating impact of the constitution ought to be formed as constitutional announcements, obliging the legislator to law making activities developing thoughts existing in the constitution, in directions and forms stipulated therein [...]. Even if no constitutional announcements are made the generality of the constitutional provisions ought to be considered as the obligation of

<sup>9</sup> M. Gulczyński, *System Principles in the Drafts of the Constitution of the Republic of Poland*, „Państwo i Prawo” 1994, No. 4, p. 13–14.

<sup>10</sup> A. Lichorowicz, *Constitutional Bases of the Agricultural System of the Republic of Poland (in the Light of Article 23 of the Constitution)*, „Studia Iuridica Agraria”, Białystok 2000, vol. I, ed. S. Prutis, p. 33. Also: T. Kurowska, *Family Farm or Developing Farm. Dilemmas of the Choice*, [in:] *Polish Agricultural Law Entering the European Union*, ed. S. Prutis, Białystok 1998; T. Kurowska, *Family Farm in the Light of Article 23 of the Constitution*, [in:] *Ownership and Its Limitations in Polish Law*, eds. K. Skotnicki, K. Winiarski, Częstochowa 2004, p. 50–51.

<sup>11</sup> K. Stefańska, *Family Farm as the Element of the Agricultural System*, „Studia Iuridica Agraria”, Białystok 2002, vol. III, eds. T. Kurowska, S. Prutis, p. 173–175.

<sup>12</sup> L. Garlicki, Chapter I ”Rzeczpospolita”, Article 23, [in:] *The Constitution of the Republic of Poland. Commentary*, ed. L. Garlicki, vol. IV, Warsaw 2005, p. 4.

<sup>13</sup> A. Bałaban, *Functions of the Constitution*, [in:] *Character and Structure of the Constitutional Norms*, ed. J. Trzeciński, Warsaw 1997, p. 9.



the legislator [...] to its law making activities". The legal function of the provision of Article 23 of the Constitution is a basis for the definition of basic values to be implemented by the constitution and the process of its use. The provision forms a framework for the determination of the dynamics of constitutional processes in future, by setting "the direction and limits of the evolution of the leading act". From this point of view, the actuating character of Article 23 of the Constitution is fairly clear.

*De lege ferenda*, the entire status of the family farms should be regulated, with respect to the coordination of their financial and production functions with other functions, e.g. ecology, and the legal regulation should follow the requirements resulting from the aims of the transformed agricultural system. A more comprehensive approach to new legal solutions would be recommended in the analysis of Article 23 of the Constitution and looking for such legal solutions, to account for a complex, joint and adequate manner of the criteria of the family farm and the assumptions of the agricultural system.

The legal condition in the implementation of the constitutional principle of the family farm as the basis of the agricultural system of the state changed considerably in 2003, after the Act on Shaping of the Agricultural System was passed<sup>14</sup>. The Act contained the first legal definition of a family farm. The introduction of the normative construction of a family farm was a correct action. According to Article 5 clause 1 of the Act "A family farm is a farm: 1) run by an individual farmer and 2) not bigger than 300 hectares of the total area of used agricultural land". The definition is made by the combination of two other legal definitions. It consists of an objective element, i.e. the idea of a farm, defined as stated in the Civil Code, but not lesser than 1 hectare and not bigger than 300 hectares; and the subjective element, i.e. the idea of an individual farmer<sup>15</sup>. In this approach, as the two legal definitions are interdependent, it is not possible to interpret ideas contained therein separately. The scope of the definition of an individual farmer – the subjective element – influences directly the final idea of a family farm – the objective element. The reverse dependence also exists. This evokes controversies and doubts concerning the objective scope of the idea of "the family farm". And, in spite of many comments on the problems connected with this act<sup>16</sup>, its provisions still evoke reflections of different kinds.

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<sup>14</sup> Act of 11th April 2003 on Shaping of the Agricultural System (Consolidated text: Journal of Laws of 2012, item 803).

<sup>15</sup> P. Blajer, *The Idea of an Individual Farmer in the Act on Shaping of the Agricultural System*, „*Studia Iuridica Agraria*”, Białystok 2007, vol. VI, eds. S. Prutis, K. Stefańska, p. 180.

<sup>16</sup> See: A. Lichorowicz, *Instruments Affecting the Land Structure of Poland in Act of 11th April 2003 on Shaping of the Agricultural System*, KPP 2004, No. 2, p. from 387; Z. Truszkiewicz, *The Transfer of the Ownership of an Agricultural Real Property in the Light of the Act on Shaping of the Agricultural System*, Part I, „*Rejent*” 2003, No. 9, p. from 48; also: Z. Truszkiewicz, *The Transfer of the Ownership of an Agricultural Real Property in the Light of the Act on Shaping of the Agricultural System*, Part II, „*Rejent*” 2003., No. 11, p. from 113; J. Górecki, *New Limita-*

The definition of a family farm was based on the following premises:

- 1) The farm is run by an individual farmer, i.e.:
  - a) a natural person who is an owner, a perpetual user, an independent possessor or a lessee of agricultural real properties, running the farm personally, which is expressed in work on the farm and in taking all decisions concerning the agricultural activity of the farm;
  - b) a person having agricultural qualifications;
  - c) a person who has lived at least for 5 years in a municipality on the territory of which one of the properties of the farm is located;
- 2) the total area of the used agricultural land of the farm is not bigger than 300 hectares.

Two conditions must be fulfilled: the subjective condition concerning a person running the farm and the objective condition concerning the maximum area of the farm.

#### 4. REGULATION AND CONTROL OF AGRICULTURAL PRODUCTION

A legal definition of a farm<sup>17</sup> and a legal definition of an enterprise<sup>18</sup> exist in Polish legislation. The construction of “agricultural enterprise” or “agricul-

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*tions of the Turnover of Agricultural Real Properties*, „Państwo i Prawo” 2003, No. 10, p. from 5; E. Klat-Górska, *Limitations in the Purchase of the Ownership of Agricultural Real Properties According to the Act on Shaping of the Agricultural System*, Part I, „Rejent” 2004, No. 5, p. from 58; E. Klat-Górska, *Limitations in the Purchase of the Ownership of Agricultural Real Properties According to the Act on Shaping of the Agricultural System*, Part I continued, „Rejent” 2004, No. 6, p. from 72; T. Żyznowski, *Some Problems of the Act on Shaping of the Agricultural System*, [in:] *In Memory of Judge Stanisław Rudnicki*, Warsaw 2005, p. from 375.

<sup>17</sup> Article 55<sup>3</sup> Civil Code: Agricultural land together with forest land, buildings and their parts, installations and livestock, if they constitute or may constitute an organized economic entirety along with the rights bound with conducting an agricultural farm shall be considered an agricultural farm.

<sup>18</sup> Article 55<sup>1</sup> Civil Code: An enterprise is an organized set of intangible and tangible assets, which is dedicated to conduct economic activity.

It shall include in particular:

- 1) the designation which individualizes the enterprise or its separated parts (name of the enterprise);
- 2) ownership of immovable property or movable things, including installations, materials, goods and wares as well as other proprietary rights to immovable property or movable things;
- 3) rights resulting from contracts of lease and tenancy of immovable property or movable things as well as rights to use immovable property or movable things resulting from other legal relations;



tural entrepreneur” has not been regulated. It can be concluded that the legislator sees no convincing *ratio legis* of such regulation. On the other hand, regulations concerning a farm were put among the regulations of an enterprise in the Civil Code. The logical conclusion is that a farm is simply a specific form of running an enterprise. The systematics of the Civil Code can be a basis of attempts to link the two notions. Both the forms are used for economic (agricultural or not agricultural) activity<sup>19</sup>. Moreover, according to the act of 2<sup>nd</sup> July 2004 on the freedom of economic activity<sup>20</sup>, a farmer could be treated like an entrepreneur running business activity – all necessary conditions are fulfilled. It is enough if his activity is carried out for earning purposes; which is characteristic of farms now, according to many commentators. Running a farm is usually production activity, organized and continual, and a farmer runs it professionally and on his behalf<sup>21</sup>. However, Article 3 of the above mentioned act excludes its use in reference to production activity in agriculture – agricultural crops, breeding animals, gardening, growing vegetables, forestry, fishing, the so-called agrotourism and the production of wine by farmers, making less than 100 hectoliters of wine in a financial year. This does not mean that the activity of a farm is not business activity. In such a situation Article 3 would be unnecessary in the act on freedom of economic activity, as the exclusion of the use of the act for the type of activity that is not understood as economic activity<sup>22</sup>.

The lack of regulation concerning the status of a farmer as an entrepreneur is explained with historical events, the present regulations based on industrial law of 1927 and treating of farming activity not as earning for profit but only for the satisfaction of the needs of a family; on the other hand, the lack of such regulations is the result of uniform agricultural policy and development vision of agriculture. Obviously, the introduction of legal regulations is not satisfactory. An important factor is the creation of economic conditions of such activity<sup>23</sup>.

4) receivables, rights from securities and pecuniary means;

5) concessions, licenses and permits;

6) patents and other industrial property rights;

7) economic rights arising from copyright and from neighbouring rights;

8) the enterprise’s trade secrets;

9) books and documents related to conducting economic activity.

<sup>19</sup> Z. Truskiewicz, *Title to a Farm (to an Enterprise)*, [in:] *Dissertations and Studies. In memory of Professor Aleksander Lichorowicz*, eds. E. Kremer, Z. Truskiewicz, Cracow 2009, p. 258.

<sup>20</sup> Act of 2<sup>nd</sup> July 2004 on Freedom of Economic Activity (consolidated text: Journal of Laws of 2013, No. 672 as amended).

<sup>21</sup> R. Budzinowski, *The Legal Status of a Farmer as an Entrepreneur*, „Ruch Prawniczy, Ekonomiczny i Socjologiczny” 2002, year LXIV, No. 3, p. 114.

<sup>22</sup> R. Budzinowski, *On the Question of the Legal Status of a Farm as an Enterprise*, [in:] *Dissertations on Private Law. In memory of Professor Aleksander Oleszko*, eds. A. Dańko-Roesler, J. Jacyszyn, M. Pazdan, W. Popiołek, Warsaw 2012, p. 55. *On the Question*

<sup>23</sup> R. Budzinowski, *The Legal Status of a Farmer...*, p. 119–120.

At the same time, many legal acts contain norms treating a farmer as an entrepreneur, and farming is treated as economic activity. As mentioned above, these are the regulations of the Civil Code (Article 55<sup>3</sup>, among the regulations of an enterprise), and Article 43<sup>1</sup>, stating that “*an entrepreneur is a natural person, a legal person and an organizational entity mentioned in Article 33<sup>1</sup> § 1, running economic or professional activity on its behalf*” – this definition covers also production activity in agriculture.

The next examples are:

- income tax act, in which agricultural activity is classified along with other economic activities;
- act on tax on goods and services, in which tax payers are treated as entities running economic activity, including farmers;
- act on agricultural market investigations, in which subjects running production activity in agriculture are also classified as entrepreneurs;
- Commercial Companies Code, in which special regulation of companies running farms was cancelled and they are regulated as other entities<sup>24</sup>.

Agricultural activity can be run in the form of a commercial company, as accepted by the present commercial code. The most suitable form seems to be a model of capital company, especially a limited liability company. There are no formal obstacles in the transformation of a farm into a capital company but few of them exist in agriculture. The reason is probably the special situation of farms, usually run by the members of the family, for whom a farm is not only a source of earned money but it also performs a social and residence function. Ties between family members are not like those between shareholders of a company. Managing a farm cannot follow the standard way of company management. Economic charges are important: a farm pays only agricultural tax and a company, and also its shareholders – income tax<sup>25</sup>. That is why the form of a company is used in practice only for big farms, transformed during the reconstruction of state-owned agricultural enterprises.

On the other hand, there are some regulations, in which the legislator, realizing some specific conditions of running agricultural activity, creates some facilities, not existing for enterprises. First of all, there is no duty to be registered at the National Court Registry (unless the activity is run in the form of a commercial company). The next example is that farmers have no possibility to become bankrupt and no corrective proceedings can be carried out. Farmers are not burdened with general social insurance and they pay only agricultural tax. These are only

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<sup>24</sup> R. Budzinowski, *A Farm and an Agricultural Enterprise*, [in:] *Agricultural Law*, ed. P. Czechowski, Warsaw 2011, p. 114.

<sup>25</sup> P. Czechowski, *A Farm and an Agricultural Enterprise*, [in:] *Commercial Law of 21<sup>st</sup> Century. Time of Stabilization, Evolution or Revolution? Jubilee Book of Professor Józef Okolski*, Warsaw 2010.

the simplest examples, given to illustrate the difference between the legal position of an entrepreneur running economic activity and the position of a farmer.

A question can be raised if the entirety of the regulations, existing in Poland now, justifies a statement that a farm can be treated as an agricultural enterprise, and a farmer can be granted the status of an agricultural entrepreneur? The answer seems positive, certainly a farm is a specific kind of an enterprise. One must remember the specific character of such activity, enforcing the adjustment of regulations concerning an enterprise to the conditions of agricultural activity. We can speak about the status of the two subjects gradually coming closer. But, considering all regulations and the activity of the legislator, the view of A. Lichorowicz must be accepted; he noticed the stagnation and uncertainty of the legislator in regulating the status of a farm and estimated the process of bringing the two regulations together as merely the beginning stage<sup>26</sup>.

## INTEGRATION OF AGRICULTURAL PRODUCTION IN POLISH CONSTITUTIONAL SYSTEM

### Summary

The essence of the agricultural law is related to agricultural activities and is regulated in private law; whereas public law specifies the aims and conditions of performing these activities.

The Stat is obliged to establish law supporting family farms in economic, social and financial aspects; and to introduce legal regulations protecting the interests of the owners of such farms.

The principle of the family farm should be a sign-post and reference for all state authorities in their implementation of any tasks, duties and obligations .

The acceptance of the normative value of Article 23 of the Constitution leads to the reconstruction of a norm ordering:

1) to recognize that the family farm is the dominant type of subjects carrying out agricultural production;

2) to prefer the dominant position of the family farm by different legal regulations, in particular tax and succession law.

Polish doctrine of agricultural law has not solved the problem, whether Article 23 of the Constitution of 1997 has a juridical function of the agricultural sphere, and its formulations are guidelines for normal legislature and are binding directly for all

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<sup>26</sup> A. Lichorowicz, *A New Legislative Stage Approaching French „exploitation Agricole” to the Legal Model of an Enterprise*, „*Studia Iuridica Agraria*” 2007, vol. VI, eds. S. Prutis, K. Stefańska, p.18.

citizens, authorities and institutions; or the regulation is a general clause, enabling free interpretation by law makers and law executors, even closer to an ideological manifest than to a strictly legal text .

The lack of regulation concerning the status of a farmer as an entrepreneur is explained with historical events, the present regulations based on industrial law of 1927 and treating of farming activity not as earning for profit but only for the satisfaction of the needs of a family; on the other hand, the lack of such regulations is the result of uniform agricultural policy and development vision of agriculture.

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**KEYWORDS**

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gospodarstwo rodzinne, przedsiębiorstwo rolne, produkcja rolna