

Walerian Pańko – on Ownership and Possession



Małgorzata Korzycka

L.L.D., Professor of Law, Faculty of Law and Administration, Warsaw University.

✉ m.korzycka@uw.edu.pl

<https://orcid.org/0000-0002-0172-1112>

Key words: Walerian Panko, Walerian Pańko, Right of Ownership and its Contemporary Functions, Individual Farm Concept, Andrzej Stelmachowski

Introduction

Walerian Pańko, a student and the first promoted doctor of Professor Andrzej Stelmachowski,¹ was writing in his papers about ownership and possession the most and with brilliant insight. In the times when he was developing his original concepts, he distinguished himself with an unusual approach to law, noticing numerous conditions of executing the property right, and possession related to ownership, and even stating that “[l]egal and material and even constitutional guarantees of ownership may become paper declarations if they are not supported by the entire legal system, in the

political and administrative practice of economic life”.²

1. On ownership

Walerian Pańko developed an innovative concept of understanding the ownership as the presumption of general competence to use and dispose of real property.³ He presented it more thoroughly in his paper entitled *O prawie własności i jego współczesnych funkcjach*⁴ (Ownership and its Contemporary Functions), in which he analysed a dilemma regarding the reconciliation of the right of an owner’s exclusivity with numerous limitations of that right and he stated *inter alia* that “the crux of the ownership is most simply – and most fully – expressed

1 Professor Andrzej Stelmachowski, when talking about Walerian Pańko (1941–1991), tended to use the evangelical phrase “my beloved student”, which was mentioned on the 25th anniversary of the tragic death of Walerian Pańko, President of the Supreme Audit Office (NIK), by Roman Wyborski, *Państwo Pański*, “Rzeczpospolita. Plus Minus”, 8–9 October 2016, p. 28.

2 W. Pańko, *O prawie własności i jego współczesnych funkcjach*, Katowice 1984, p. 29.

3 See idem, *Własność gruntowa w planowej gospodarce przestrzennej. Studium prawne*, Katowice 1978.

4 Idem, *O prawie własności...*, reprint for the 25th death anniversary, Katowice 2016.

as the idea of presumed competence; a presumption attributable to the owner and referring to the entirety of behaviours towards a specific thing (good) (...). The idea of presuming general competence seems to be a compromise view on the following dilemma: either singular monopoly or »dividing« a competence structure of economic power between all entities participating in it”.⁵

esnych funkcjach of 1984, is a still unappreciated, yet very significant step in that field which has not been made by anyone for a long time” (...). Objecting to the socialist or communist concept of socialisation, he believed that the owner is a person who is supported by the presumption of competence in managing and disposing of a specific good (...). Professor Pańko was of the opinion – which he could not write expressly,



Legal and material and even constitutional guarantees of ownership may become paper declarations if they are not supported by the entire legal system, in the political and administrative practice of economic life.

It is impossible not to underline that the above-mentioned monograph of Walerian Pańko *O prawie własności i jego współczesnych funkcjach*⁶ (Ownership and its Contemporary Functions) is deeply embedded in the functional approach to law, which is a characteristic of the school of Professor Stelmachowski. It includes a concept constituting the source of deepened studies on the theory of ownership, which was most fully expressed in the quoted paper, being a significant contribution to the theory of ownership. As a participant and one of the co-authors of the Rzeszów-Ustrzyki Agreement (1981), Walerian Pańko was aware of inevitable future political changes. Therefore, he tried to adjust the theory of ownership to emerging new political conditions in that paper – which resulted *inter alia* from profound legal and comparative analyses conducted at the University of Florence.

In the memoir of Walerian Pańko, Professor Andrzej Stelmachowski wrote *inter alia*: “I attach the biggest importance to his theory of ownership. I believe that his concept on that matter, published in his paper entitled *O prawie własności i jego współcz-*

because those were the times of censorship, however, it is clear from his papers – that ownership, and not only the private one but also the ownership of certain groups such as local self-governments, co-operatives and associations, will be particularly significant in the new political system. According to him, there should be an extensively developed medium sphere of self-governmental ownership, group ownership of a different type, between the ownership of a single private owner and state ownership.⁷

The issue regarding the correlation between possession and ownership is an everlasting problem of legal relationships, especially those concerning agricultural land. It is enough to recall an accurate and brief aphorism used by Professor Stelmachowski at the beginning of the 2000s at a scientific conference dedicated to reprivatization: “Ownership means accomplished facts plus sufficiently long lapse of time”.⁸

5 Ibidem, p. 75–76.

6 Ibidem. The paper includes broad Polish and foreign literature (mainly Italian and French).

7 A. Stelmachowski, *Do Jego przemyśleń i prac będziemy często wracać*, “Samorząd Terytorialny” 1991, No. 11–12, dedicated to the memory of Professor Walerian Pańko, p. 5.

8 This statement is quoted in the memoir of Professor Stelmachowski by one of his students – Doctor Bolesław Banaszkiwicz, *Profesor Andrzej Stelmachowski (1925–2009)*, “Palestra” 2009, No. 7–8, p. 355, 356.

Pańko's reflections about the ownership of land are especially insightful. He reminded that Polish agriculture did not go through the capitalisation process, which makes farmers skilled entrepreneurs. The ownership was the symbol not only of property but also of the right to live and, in the times of captivity, it also constituted the guarantee of survival despite foreign pressures. "Therefore, the proverbial love of a Polish farmer to the land was probably of a special psychological value, however, the substratum of that love was prosaic in the overpopulated countryside

includes the ownership of agricultural land, goes beyond civil law studies and meets the administrativist field of studies on ownership.¹⁰

As already mentioned, Walerian Pańko comes from the school of Professor Stelmachowski. Therefore, it is appropriate to briefly refresh Professor Stelmachowski's concepts and thoughts regarding ownership and possession. Already almost 50 years ago, he stated that "it would be a mistake now to understand ownership only as a substantive right. Ownership is rather a set of rights and duties (...). Who knows, maybe the



The crux of the ownership is most simply – and most fully – expressed as the idea of presumed competence; a presumption attributable to the owner and referring to the entirety of behaviours towards a specific thing (good) (...). The idea of presuming general competence seems to be a compromise view on the following dilemma: either singular monopoly or »dividing« a competence structure of economic power between all entities participating in it.

where there were no special migration possibilities"⁹ Walerian Pańko was presenting historical threads of development in the field of ownership in an exceptionally interesting way to get to presenting the state and directions of development of Polish legal science in that field (this was namely the state as of 1984 – the year of publishing the book). He contested that ownership is mainly a field of civil law studies. According to Pańko, there seem to be three trends in the broadly understood civil law studies, namely the ideological and political trend, the legal and dogmatic trend and the so-called "branch" trend. The latter, which also

correlation of rights and duties, which is so typical of obligations, should also be considered in the field of rights in rem. Ownership is thus an effective right towards society but also a limited right because of the needs of society".¹¹

9 W. Pańko, *O prawie własności...*, p. 25.

10 Other representatives of this trend were, apart from Walerian Pańko, Andrzej Stelmachowski and Małgorzata Korzycka. See W. Pańko, *O prawie własności...*, p. 27.

11 A. Stelmachowski, *Wstęp do teorii prawa cywilnego*, Warsaw 1969, p. 227, 228; idem, *Zarys teorii prawa cywilnego*, Warsaw 1998, p. 206; idem (in:) *Prawo rzeczowe*, ed. T. Dybowski, "System Prawa Prywatnego", vol. 3, Warsaw 2003, Chapters II, III, IV, p. 63–468.

Referring to ownership as the broadest right to things, Professor Stelmachowski expressed an important view that the constitutional legislator noted the danger of such limitations which could distort the ownership. They cannot lead to a situation in which the owner's rights can be reduced to *nudum ius* (naked right) and therefore, he claims that "the most difficult problem is the problem of protecting agricultural ownership in terms of its attribute which we traditionally describe as the use of things (Article 140 of the Civil Code). The problem is about the conglomerate of legal norms which regulate other matters, however, they sometimes have an indirect influence on the right to use things".¹²

Agricultural ownership which is distinguished, according to Professor Stelmachowski, in terms of the subject matter of ownership is the set of rights and duties which determine the legal situation of an entity – the owner of a farm. According to Professor Stelmachowski, the fact that the mentioned duties refer not to specific individuals but rather to the state which represents the interests of society as a whole, constitutes a characteristic of agricultural ownership. In exchange for duly performance of agricultural ownership, the owner has the right to count on help (from the state) when executing his right of ownership.¹³

He referred the concept of agricultural ownership to a farm as peculiar property, because a farm is the subject matter thereof.¹⁴ Therefore, it could be concluded that the above-mentioned concept of agricultural ownership refers to property in a broad sense which includes also duties and those duties may be included in the right of owners within the meaning of Article 140 of the Civil Code.¹⁵ Such a conclusion can be found in the doctoral dissertation of Józef Nadler – one of Stelmachowski's students from his Wrocław period – *Pojęcie indywidualnego gospodarstwa rolnego w prawie rolnym* (Individual

Farm Concept in Agricultural Law). We should bear in mind that such an approach broke with the fiction regarding the abstract competence of the owner who, pursuant to Article 140 of the Civil Code, may – excluding other persons and within the limits specified by the law and principles of social coexistence – use things in accordance with the social and economic purpose of his right – for the owner who exercises his right and such a behaviour is, by all means, common.

As written by Andrzej Stelmachowski, ownership provides the owner with a certain monopoly of control over the subject matter of ownership. Without that monopoly, it is not possible to conduct rational business activity or specify who is responsible for its outcome. Vesting the ownership in a person means the decentralisation of a significant scope of an economic decision.¹⁶ Walerian Pańko develops the ideas of Professor Stelmachowski by stating that "certain powers must always be vested in the owner, there is a certain minimum without which a given person is no longer the owner".¹⁷

Walerian Pańko observed in his studies on ownership that the issue of ownership is the central element of each political doctrine, constituting a weapon of ideological fight.¹⁸ According to Walerian Pańko, the ownership in the political sphere plays a significant role in the context of a battle that family farms in Western Europe fight with the power of commercial capital and the processing industry¹⁹ and this shrewd statement is fully up-to-date nowadays. He also believed that the main factor of the differentiation of opinions regarding the essence and structure of the ownership is the ideological (political) differentiation of the concept of ownership.²⁰

Representing the functional approach to law, Walerian Pańko questions the function of law, which is frequent also in Western European science, as the guarantor of freedom with an unclear content and he stresses the importance of ownership for the protection

12 A. Stelmachowski (in *Prawo rzeczowe*, ed. T. Dybowski..., Chapter II *Modele własności i ich uwarunkowania społeczno-ustrojowe*, in particular p. 192.

13 *Ibidem*, p. 189.

14 *Ibidem*, p. 187–193.

15 As J. Nadler, *Pojęcie indywidualnego gospodarstwa rolnego w prawie rolnym*, Wrocław 1976, p. 157.

16 See A. Stelmachowski, *Własność rolnicza*, "Ruch Prawniczy, Ekonomiczny i Socjologiczny" 1985, No. 4, p. 8.

17 As W. Pańko, *O prawie własności...*, p. 77.

18 *Ibidem*, p. 21.

19 *Ibidem*, p. 199.

20 *Ibidem*, p. 78.

of the independence of individuals in the economic, professional and even political sphere.²¹ He develops this idea by writing that in the western doctrine, those are different trends of functionalism which have their 19th century philosophical origin in the views of Auguste Comte and the first full development in the doctrine of Léon Duguit. “Those trends, which underline social contents in the ownership, tried to eradicate the features of private egoism therein. Whereas legal and natural doctrine-related trends connect the ownership with the guarantees of freedom and democracy, using even the international legal level of protection of basic human rights. The Catholic Church doctrine – which tries to construct its own doctrine of ownership independent from the basic ideological dispute – had an undisputed influence on those two trends”.²²

Walerian Pańko put forward also the safety function (also called the “prudence” function). He was drawing attention to numerous limitations of the material function of ownership, especially in the case of succession and disposal, as well as to the role of “work”. He assumes that work is “the most important source of ownership, it justifies ownership and ownership cannot turn against work”.²³

When mentioning the work factor, it is worth quoting – as a digression which, however, is strictly connected with Pańko’s trend of legal thinking about ownership and possession – a view of another student of Professor Stelmachowski, namely Bolesław Banasziewicz,²⁴ who indicated the political equality of work in an individual farm with other forms of

professional work in his doctoral dissertation entitled *Prawne aspekty pracy w indywidualnym gospodarstwie rolnym* (Legal Aspects of Work on an Individual Farm). He was stating that obviously the equality may not be treated in a mechanical way if the occupation of an individual farmer is characterised by the connection of the status of a person obtaining his or her means of support from work with the position of an owner and entrepreneur.²⁵ In the context of work performed on a farm by the possessor, Banasziewicz comes to an interesting conclusion, considering: a) the specificity of work of an independent possessor on their own account and b) boundaries of that work’s durability. He notices a conflict of two values or a collision of two axiologically justified postulates: the postulate of guaranteeing the disposal of the products of work and its stability to a person who individually performs useful work and the second postulate – guaranteeing the exclusivity of exercising the subject matter of an owner’s right to the owner. The legislator had to find a compromise between those two postulates.²⁶

Coming back to the above-mentioned further functions of the ownership, Walerian Pańko was looking for the maintenance of social balance and peace as part of the organisational function of ownership in such a sense that ownership was a method of organising society, a method of regulating social relations expressing the interests of different entities.²⁷

Disputing with Małgorzata Korzycka, a student of Professor Stelmachowski, who opted for the productive function of ownership in her doctoral dissertation regarding the protection of agricultural ownership, he indicated that we should not limit ourselves to that function in the legal constructions of agricultural ownership but we should rather look for the harmony of different functions of ownership: proprietary, productive, organisational, psychological and the harmony of different interests: social and individual.²⁸ What Pańko

21 Ibidem, p. 199.

22 Ibidem, p. 78.

23 Ibidem, p. 205.

24 Doctor Banasziewicz, a student of Professor Stelmachowski and an advisor of protesting farmers during the period of “Solidarność”, developed together with Professor Stelmachowski and Professor Pańko the wording of the Rzeszów-Ustrzyki Agreement between the protesting farmers and the authorities of the People’s Republic of Poland in 1981. The Agreement included the guarantee of the inviolability of peasant property together with the right to succession, levelling of rights of individual farmers with the state-owned and co-operative agriculture and the abolition of limitations regarding transactions in agricultural land, among other provisions.

25 B. Banasziewicz, *Prawne aspekty pracy w indywidualnym gospodarstwie rolnym*, Warsaw 1989, p. 38.

26 Ibidem, p. 46.

27 As W. Pańko, *O prawie własności...*, s. 206.

28 See W. Pańko, *Recenzja książki M. Korzyckiej „Ochrona własności rolniczej”*, Warszawa 1979, “Państwo i Prawo” 1982, No. 3–4, p. 158.

had in mind was mostly the situation of owners who are actual producers and carry out production based on its all elements, namely: land and other means of production, capital, work of people and organisation thereof. Especially this last element had a significant

which levels possession and ownership in the field of damages-related protection is also significant. He expresses his view in the following way: “If possession is supported by the presumption that the possessor is entitled to his right, the possessor should



We should rather look for the harmony of different functions of ownership: proprietary, productive, organisational, psychological and the harmony of different interests: social and individual.

importance, considering the fact that there existed the normative requirement of agricultural qualifications for the acquisition of the ownership of agricultural real property.

2. On possession

Both Andrzej Stelmachowski as well as Walerian Pańko commented on possession many times and in an original way. Stelmachowski is the author of a pioneer approach to possession which he perceived either as a substantive right or an expectancy right²⁹ and this was the thesis of his doctoral dissertation, which he defended at the University of Poznań in 1950. As we know, the views that possession is only a fact³⁰ prevail in civil law studies, however nowadays, there are many opinions in the doctrine that opt for treating possession as a specific right.³¹ A view of Professor Stelmachowski

be then treated the same as the owner”.³² It is impossible not to refer to one of the biggest achievements of Stelmachowski’s legal thought, connected with obligation relationships, and which were developed in Pańko’s doctoral dissertation regarding leasing agricultural land. In the first issue of *Wstęp do teorii prawa cywilnego* (Introduction to the Theory of Civil Law) (1969), Professor Stelmachowski noted that a contract – which is the basis for “commercial and market relationships” – becomes also the basis for the so-called social agreement. He was writing about the necessity of supplementing the autonomy of entities with “the lack of direct pressure from the state”, the characteristic which he considered omitted in many civil law papers.³³

29 A. Stelmachowski, *Istota i funkcja posiadania*, Warsaw 1958, p. 41 and next.

30 See e.g. A. Kunicki (in:) *System prawa cywilnego*, ed. W. Cza-chórski, vol. 2, *Prawo własności i inne prawa rzeczowe*, ed. J. Ignatowicz, Wrocław–Warszawa–Kraków–Gdańsk 1977, p. 839 and next as well as rich literature mentioned therein.

31 See from the pre-war literature E. Wańkowski, *Przyszłość skarg posesoryjnych*, “Palestra” 1937, No. 1–2, “if possession enjoys the protection of the right by itself, regardless of the fact whether or not it is based on any other right, it is obviously the right by itself”, p. 13. See also S. Wójcik, *Czy posiadanie jest dziedziczne?* (in:) *Rozprawy prawnicze. Księga pamiątkowa*

dla uczczenia pracy naukowej Kazimierza Przybyłowskiego, ed. W. Osuchowski, M. Sośniak, B. Walaszek, Kraków–Warszawa 1964, p. 529; idem, *Windykacyjna ochrona własności w polskim prawie cywilnym*, “Zeszyty Naukowe Uniwersytetu Jagiellońskiego”, CXVIII, Kraków 1965, p. 13–14. Similarly M. Szaciński, *Dziedziczenie posiadania*, “Nowe Prawo” 1966, No. 7–8, p. 925.

32 A. Stelmachowski, *Istota i funkcje...*, p. 289; differently T. Dybowski, *Odszkodowanie za naruszenie posiadania*, “Nowe Prawo” 1973, No. 1, p. 3–19.

33 It has to be reminded that Stelmachowski derives the autonomy of entities from two basic values: 1) the dignity of a human being – as the only and unique being, 2) equality of all people which entails equality in mutual relations. In *Wstęp do teorii*

Tomasz Kozłowski, when characterising Stelmachowski's approach and concept regarding civil law a few years ago, wrote accurate and meaningful words: "In his »reflections on general properties« of civil law, Stelmachowski managed to show – unprecedentedly in the »communist block« – such a power of the independence of civil law existence even towards such a developed coercive apparatus and misappropriation of human creativity as was successfully built in the countries dependent on the Soviet Union. If civil law maintained its independence even in totalitarianism, this means that, *de facto*, there exists *Ius*, from which *Lex* is to originate³⁴".

openly that "the process of expansion of possessory protection is an outcome of the crisis of the ownership".³⁶ If there is no owner and the possessor fulfils the content of the right of agricultural ownership, he becomes the "carrier" of the social, national and economic value of that right. In the case of a lease and similar contractual relationships, there is, however, the problem of stability concerning the situation of a working farmer.³⁷ When writing about the lease of agricultural land, namely an agreement which is strongly present in legal and agricultural relationships, he postulated the creation of a system of template agricultural lease agreements – and we should keep in mind that it was 1975 – which



Walerian Pańko noticed a kind of "tension" accompanying the relation between possession and ownership due to numerous situations when the owner separates himself/herself from the subject matter of his/her ownership, especially when a farm is ran by a possessor without the title of ownership.

Walerian Pańko was developing many views of Professor Stelmachowski regarding possession in an unusual way and he was also creating his own original concepts. Pańko's doctoral dissertation concerned, as mentioned, the lease of agricultural land,³⁵ namely the right based on dependent possession. In that monograph, he discusses the problem of "proprietary" protection of the possessor in the context of a lease, stating

prawa cywilnego, Stelmachowski very creatively developed the thread of synallagma, which comes from ancient times, constituting the expression of mutuality (issue 2 as amended, Warsaw 1984, p. 107 and next).

34 As T. Kozłowski, *Globalne prawo a partykularne państwo według Andrzeja Stelmachowskiego* (in:) *Prawo w dobie globalizacji*, ed. T. Giaro, Warsaw 2011, p. 22.

35 W. Pańko, *Dzierżawa gruntów rolnych*, Warsaw 1975.

would give such agreements a certain stability and appropriate shape. He was of the opinion that the lease relationship finds its protection rather outside the obligation sphere in the field of protection of possession (in fact – the exclusivity of using and benefiting from the leased land).³⁸ That view would require a contemporary analysis and, maybe, it is the key to shape such an agreement, especially in the field of actual mutuality (the problem of contractual dominance and the use of a poorer side of the market).

Walerian Pańko noticed a kind of "tension" accompanying the relation between possession and ownership due to numerous situations when the owner

36 *Ibidem*, p. 156.

37 *Ibidem*, p. 131.

38 *Ibidem*, p. 231.

separates himself/herself from the subject matter of his/her ownership, especially when a farm is ran by a possessor without the title of ownership. For instance, the owner may delegate, through a legal action, the right to collect profits – and thus the right to work on own account – to a dependent possessor, e.g. a lessee (Article 693 of the Civil Code) or a user (Article 252 of the Civil Code). In such a case, the boundaries of that right are determined by the content of the legal relationship between the owner and the dependent possessor, specified by an agreement and appropriate provisions of law. Then, we face the problem, whether and to what extent law should provide protection to the possessor. A thesis of Stelmachowski, who – based on the social and economic clause of the purpose of law – opted for dismissing a claim of a non-possessing owner against a possessor who was a producer, was broadly discussed.³⁹ We should keep in mind that in the 1950s, courts were refusing to consider debt collection complaints, granting protection to the possessor who was using agricultural real property based on an informal sales agreement (without a notarial deed).⁴⁰

It is not a coincidence that a possessor-producer often paves a “priority” way for himself/herself in the case of protection where the owner does not exercise his/her right in accordance with its social and economic purpose. There are dysfunctions when it comes to the use of a debt collection or restitution claim, brought by an owner who is not connected with agriculture. We may mention here the institution of acquisitive prescription from the Civil Code and a construction similar to an acquisitive prescription (with significantly shortened periods of acquisitive prescription for possessors in good and bad faith), resulting from the Act of 26th October 1971 on Regulating the Ownership of Farms.⁴¹ That Act had basically one-time usage,⁴²

39 A. Stelmachowski, *Klauzule generalne w kodeksie cywilnym (zasady współżycia społecznego, społeczno-gospodarcze przeznaczenie prawa)*, “Państwo i Prawo” 1965, No. 1, p. 18.

40 There is a rich literature on that matter, see for instance J. Nadler, *Z problematyki ochrony długoletnich posiadaczy gruntów*, “Nowe Prawo” 1968, No. 1.

41 Journal of Laws (Dz.U.) of 1971 r., No. 27, item 250.

42 The biggest group of purchasers of real property under law itself was constituted by autonomous possessors of real properties who possessed them continuously for 5 years in good

however, of a significant importance due to the scale since it included more than 2.5 million farms.

When talking about exercising ownership and possession, it is impossible not to mention the problem regarding conflicts between industry and agriculture which were discussed in the legal literature in the period when Pańko started to write about spatial management. In the monograph *Własność gruntowa w planowej gospodarce przestrzennej*⁴³ (Land Ownership in Zoning Plans), Pańko stated that the actual solution of those problems lies in the mechanisms of the national economy management and spatial management, which should regularly correct the negative interactions of particular branches of the economy between each other.⁴⁴ He drew attention to the necessity of planning in advance, the allocation of agricultural land to non-agricultural purposes in order to obtain the possibility to change the direction of production or even prepare to resign from running a farm, which renders it possible to minimise losses from unnecessary outlays.⁴⁵ Andrzej Wróbel introduced this view of Pańko in his book entitled *Prawna ochrona gruntów rolnych w procesie inwestycyjnym* (Legal Protection of Agricultural Land in the Investment Process) and he was developing it in his further arguments, writing for instance that “determining the boundaries of agricultural land for agricultural usage in zoning plans favours stabilisation of farming on that land”.⁴⁶

Walerian Pańko noticed years ago the danger of capitalisation on the production process by writing:

faith and for 10 years in bad faith, counting from the date of the entrance into force of the Act, namely from 4th November 1971. See W. Pańko, *Uwłaszczenie posiadaczy zależnych według ustawy z dnia 26 października 1971 r.*, “Nowe Prawo” 1973, No. 12.

43 W. Pańko, *Własność gruntowa...*

44 See also W. Pańko, A. Stelmachowski, *Struktura prawno-organizacyjna a model zarządzania rejonem uprzemysłowionym*, “Zeszyty Badań Rejonów Uprzemysławianych” 1976, No. 62, and J. Nadler, W. Pańko, *Ekonomiczno-prawne aspekty funkcjonowania PFZ i problematyka wymiany gruntów w pow. lubińskim*, “Zeszyty Badań Rejonów Uprzemysławianych” 1968, No. 31.

45 As W. Pańko, *Własność gruntowa...*, p. 101.

46 See A. Wróbel, *Prawna ochrona gruntów rolnych w procesie inwestycyjnym*, Wrocław 1984, p. 127.

“Also capital, either in the form of bank or commercial capital, has separated itself from the ownership of means of production and work. This new act of progressing capitalisation found its vent in a mortgage, pledge or instalment sale. The essence of that phenomenon was a significant split-up of ownership in the economic sense and the legal title of ownership. The owner of land is in that case a capitalist-lender, the owner of real property encumbered with a mortgage and, finally, a lessee working on the land”.⁴⁷ The most classic form which renders it possible to separate the elements of the production process from the right of ownership is a joint-stock company (*spółka akcyjna*),

summarised with a journalist’s temperament: “Let’s just think. Could a right which obliged farmers to use artificial fertilisers, especially when they could not afford those fertilisers, enjoy any respect in the People’s Republic of Poland? If only this was the sole example which satirised law and the state which enacted such law!”⁴⁹

Conclusion

It is not easy to select from among numerous reflections of Walerian Pańko those which constituted the kind of conclusions of his so inspiring legal thoughts about ownership and possession, which are

Innovative changes in the code-based constructions of the ownership and multiplying general clauses will not replace a continuous process of improving legal norms in the spirit of morality and social feelings and needs (...), the metaphor which (...) locates the contemporary world between the Scylla of conservative and Pharisaical legalism and the Charybdis of anti-legalism leading to narrow-mindedness and totalitarianism seems accurate.

which nowadays is practically not used in the countryside. Also, companies played an important role in that field by moving ownership in the economic sense away from ownership in the legal sense.⁴⁸

We can also mention that Pańko developed broad journalistic activity on the threshold of the 3rd Republic of Poland and in one of his articles, he accurately

still valid. By making this difficult choice, let’s recall that he was against the relativisation of the ownership. He wrote that “innovative changes in the code-based constructions of the ownership and multiplying general clauses will not replace a continuous process of improving legal norms in the spirit of morality and social feelings and needs (...), the metaphor which (...)

47 W. Pańko, *O prawie własności...*, p. 148.

48 Ibidem, p. 150.

49 As W. Pańko, *Wybór pory wyborów, Felietony z lat 1990–1991*, Warsaw 2001, p. 56.

locates the contemporary world between the Scylla of conservative and Pharisaical legalism and the Charybdis of anti-legalism leading to narrow-mindedness and totalitarianism seems accurate”.⁵⁰ We also owe to Walerian Pańko the following thesis which is highly important for the values protected by law: “The power of the ownership lies in the sense of real stability, certainty and continuity of law (...), by protecting certainty as the basic value of the ownership, we do not protect an egoistic monopoly but rather the presumption of exclusivity which serves the owner”.⁵¹

Bibliography

- Banaszkiewicz B., *Prawne aspekty pracy w indywidualnym gospodarstwie rolnym*, Warszawa 1989
- Banaszkiewicz B., *Profesor Andrzej Stelmachowski (1925–2009)*, „Palestra” 2009, no 7–8, p. 352–359.
- Dybowski T., *Odszkodowanie za naruszenie posiadania*, „Nowe Prawo” 1973, no 1, p. 3–19.
- Korzycka M., *Ochrona własności rolniczej*, Warszawa 1979.
- Kozłowski T., *Globalne prawo a partykularne państwo według Andrzeja Stelmachowskiego*, (w:) T. Giaro (red.), *Prawo w dobie globalizacji*, Warszawa 2011, p. 21–39.
- Kunicki A., rozdz. XX, *Posiadanie(w): W. Czachórski (red.), System prawa cywilnego*, vol. 2, J. Ignatowicz (red.), *Prawo własności i inne prawa rzeczowe*, Wrocław–Warszawa–Kraków–Gdańsk 1977, p. 825–888.
- Nadler J., *Pojęcie indywidualnego gospodarstwa rolnego w prawie rolnym*, Wrocław 1976.
- Nadler J., *Z problematyki ochrony długoletnich posiadaczy gruntów*, „Nowe Prawo” 1968, no 1, p. 58–73.
- Nadler J., Pańko W., *Ekonomiczno-prawne aspekty funkcjonowania PFZ i problematyka wymiany gruntów w pow. lubińskim*, „Zeszyty Badań Rejonów Uprzemysławianych” 1968, no 31.
- Pańko W., *Dzierżawa gruntów rolnych*, Warszawa 1975.
- Pańko W., *O prawie własności i jego współczesnych funkcjach*, Katowice 1984.
- Pańko W., *Recenzja książki M. Korzyckiej „Ochrona własności rolniczej”*, Warszawa 1979, „Państwo i Prawo” 1982, no 3–4, p. 156–159.
- Pańko W., *Uwłaszczenie posiadaczy zależnych według ustawy z dnia 26 października 1971*, „Nowe Prawo” 1973, no 12, p. 1754–1768.
- Pańko W., *Własność gruntowa w planowej gospodarce przestrzennej. Studium prawne*, Katowice 1978.
- Pańko W., *Wybór pory wyborów, Felietony z lat 1990–1991*, Warszawa 2001.
- Pańko W., Stelmachowski A., *Struktura prawno-organizacyjna a model zarządzania rejonem uprzemysłowionym*, „Zeszyty Badań Rejonów Uprzemysławianych” 1976, no 62.
- Stelmachowski A., *Do Jego przemyśleń i prac będziemy często wracać*, „Samorząd Terytorialny” 1991, no 11–12, poświęcony pamięci prof. Waleriana Pańki, p. 4–7.
- Stelmachowski A., *Istota i funkcja posiadania*, Warszawa 1958.
- Stelmachowski A., *Klauzule generalne w kodeksie cywilnym (zasady współżycia społecznego, społeczno-gospodarcze przeznaczenie prawa)*, „Państwo i Prawo” 1965, no 1, p. 5–20.
- Stelmachowski A., *Własność rolnicza*, „Ruch Prawniczy, Ekonomiczny i Socjologiczny” 1985, no 4, p. 1–15.
- Stelmachowski A., *Wstęp do teorii prawa cywilnego*, Warszawa 1969 and ed. 2, Warszawa 1984.
- Stelmachowski A., *Zarys teorii prawa cywilnego*, Warszawa 1998.
- Stelmachowski A. (w:) T. Dybowski (red.), *Prawo rzeczowe*, „System Prawa Prywatnego”, vol. 3, Warszawa 2003, chapter II, III, IV, p. 63–468.
- Szaciński M., *Dziedziczenie posiadania*, „Nowe Prawo” 1966, no 7–8, p. 922–927.
- Waśkowski E., *Przyszłość skarg posesoryjnych*, „Palestra” 1937, no 1–2, p. 10–32.
- Wróbel A., *Prawna ochrona gruntów rolnych w procesie inwestycyjnym*, Wrocław 1984.
- Wyborski R., *Państwo Pańki*, „Rzeczpospolita. Plus Minus”, 8–9 October 2016, p. 28–29.
- Wójcik S., *Czy posiadanie jest dziedziczne? (w:) Rozprawy prawnicze. Księga pamiątkowa dla uczczenia pracy naukowej Kazimierza Przybyłowskiego*, red. W. Osuchowski, M. Sośniak, B. Walaszek, Kraków–Warszawa 1964, p. 515–531.
- Wójcik S., *Windykacyjna ochrona własności w polskim prawie cywilnym*, „Zeszyty Naukowe Uniwersytetu Jagiellońskiego, CXVIII, Kraków 1965, p. 176.

50 W. Pańko, *O prawie własności...*, p. 210.

51 Ibidem, p. 212.