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## Civil Code as a Legal Basis for Defining the Term: An Agricultural Holding

**Abstract.** The aim of the publication is to assess the current legal solution within the scope of placing the notion of an agricultural holding as a basic conceptual category of the agricultural law in the Civil Code. This problem is directly connected with the postulate of coherence of the whole system of private law when it comes to the most important structural elements or just the understanding of basic notions. The statutory regulation of trade in agricultural real estate and agricultural holdings should be a code regulation, and the location of the definition of an agricultural holding in the Civil Code should be conducive to strengthening ownership. In the dilemma whether to keep in the Civil Code the regulation of trade in agricultural land (including its conceptual network with an agricultural holding at the forefront) or to transfer it to a special act (or perhaps even to the Agricultural Code), it is impossible to point to a just and possible solution. On the basis of arguments of teleological nature, especially from the scope of legislative policy, one should definitely opt for keeping the regulation of trade in agricultural land in the Civil Code.

**Key words:** agricultural holding, Civil Code, Agricultural Code

### Introduction

The Polish Deal for Rural Areas is a package of systemic changes which, as announced by the government, is to restore full economic and social dignity to Polish farmers running family farms. It consists of seven key changes for the Polish

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countryside which will be complemented by the introduction of a new legal act – the Agricultural Code. The Code will comprehensively regulate the most important principles and basic rights concerning agricultural holding.

The submitted proposal of codification of agricultural law makes us reflect on the purposefulness of this legislative procedure, especially in the context of regulating (albeit incomplete) principles of trading in agricultural real estates and agricultural holdings within a specific organic act of private law – the Civil Code. This problem is part of a broader issue related to the qualification of the agricultural law. On the one hand, it is undoubtedly true that in its area there are classic regulations belonging to private law, which have their established place in the Civil Code, including the notion of an agricultural holding. Their civilistic qualification does not raise any doubts. Apart from that the agricultural law is to a large extent permeated with a public law element (Safjan 2007). Hence, the question about possible solutions to the problem of placing the regulation of trade in agricultural land with its basic notions, including an agricultural holding, in the Polish system of law is becoming more and more relevant.

A. Lichorowicz is right to point out that a certain consistency of the regulation of trade in agricultural land underwent gradual decodification. This process stemmed from three sources:

- the first of them were changes in the Civil Code itself (1971, 1982 and 1990) consisting in the repeal of certain regulations and the liberalization of the remaining regulations on trade in agricultural land,
- the second source of decodification of the provisions on trade in agricultural land contained in the Civil Code was the jurisprudence of the Constitutional Tribunal (the judgments of the Constitutional Tribunal of 31 January 2001 and of 5 September 2007 declared unconstitutional the key provisions of Title X of Book IV of the Civil Code determining the very model of agricultural inheritance in Poland – in particular the well-known judgements of the Constitutional Tribunal of 31 January 2001. (P 4/99) and of 5 September 2007. (P 21/06);
- an important factor of decodification of the provisions on trade in agricultural land were and are specific acts, in particular the Act of 11 April 2003 on shaping of the agricultural system.

In the light of these remarks, one should agree with the author's statement that the current regulation of trade in agricultural land is a not very coherent group of regulations which "rescued" themselves from various amendments, changes and reforms (Lichorowicz 2008, p.41–42). At the same time, however, the inclusion of rights and duties connected with an agricultural holding in the framework of the announced Agricultural Code should be regarded, in my opinion, as at least premature.

The aim of the publication is to assess the current legal solution within the scope of placing the notion of an agricultural holding as a basic conceptual category of agricultural law in the Civil Code. This problem is directly connected with the postulate of coherence of the whole system of private law when it comes to the most important structural elements or just the understanding of basic notions. Striving to maintain the cohesion of the system and its unity is becoming a particularly relevant postulate, especially in view of the ongoing segmentation of private law.

## 1. Research methods

**The leading research method is the dogmatic method**, which involves the analysis of legal regulations relating – even indirectly – to the analyzed issue: determining the legal basis for the concept of an agricultural holding. Referring only to the normative context could not give satisfactory research results. Without taking into account the political and economic environment in which the regulation functions, the knowledge of its content and meaning would be incomplete and defective. Hence, it was justified to refer to the political and economic context and to indicate the circumstances favouring the codification of this notion, as well as to emphasise the influence of the political transformation process on the adopted code model of an agricultural holding. This observation confirms the validity of using the **empirical method** within the considerations. Additionally, the analyzed problem has been shown on the background of the evolution of the accepted legal regulation. Reaching for the **historical method** was determined by the necessity to evaluate changes of the law in time as well as to formulate postulates *de lege ferenda* in favour of maintaining the legal definition of an agricultural holding within the framework of the Civil Code. In order to show a broader perspective of considerations, reference has been made, albeit to a small extent, to the **comparative legal method**, indicating the experiences of Western European countries in the scope of codification of agricultural law, which could be an inspiration for the Polish legislator.

## 2. Circumstances favouring codification

As a result of the amendment to the Civil Code made by the Act of 28 July 1990, the legal definition of an agricultural holding was introduced to the Civil Code in the provision of Article 55<sup>3</sup> of the Civil Code. According to the current wording of article 55<sup>3</sup> of the Civil Code. “An agricultural holding is considered to be agricultural land, including forestry land, buildings or parts thereof, equipment and livestock, if they form or can form an organised economic unit, as well as rights connected with running an agricultural holding”. It is worth mentioning that the amendment to the Civil Code made by the Act of 14 February 2003, which came into force on 25

September 2003, excluded from the scope of the definition of an agricultural holding – obligations connected with running a holding. Thus, *de lege lata* an agricultural holding is treated as a set of assets.

This circumstance can be deemed crucial for several reasons. Firstly, before the above-mentioned amendment of 1990, the civil code did not contain its own solutions as to a number of issues related to the regulation of trade in real estate and agricultural holdings, it did not define such fundamental notions as an agricultural holding or agricultural real estate, and it provided that these notions were to be defined by the Council of Ministers by way of a regulation. As S. Wójcik accurately noticed, entrusting the Council of Ministers with the definition of these basic notions was an expression of the assumption that trade in real estate and agricultural farms, especially its scope, will be subject to changes (Wójcik, 1993,). Also, the author pointed out that the statutory regulation of trade in real estate and agricultural farms should be a code regulation and the location of the definition of an agricultural holding in the Civil Code should be conducive to strengthening ownership, because the scope of this notion, and thus the scope of the subject of state interference in ownership, would be decided by the legislator and not, as it was the case earlier, by an administrative body (Wójcik, 1983, p. 322).

This change has therefore had significant consequences. Already in its conception, it was by no means merely a manifestation of systematisation of legal regulations. S. Grzybowski is right to point out that fundamental and profound transformations of the social and economic conditions causing the hitherto existing laws to become useless, or even harmful, are the most effective codification premises (Grzybowski, 1981, p. 176–183). It is indisputable that, during the period in question, there were circumstances which in the literature were usually referred to as favourable to codification. They included, in particular:

- political considerations,
- economic considerations,
- adopting the principles of rational policy and modern legislative technique,
- psychosocial factors (Rot, 1978, p.17–20).

It should be borne in mind that the code itself, as a specific form of a legal act, is at the same time a qualified form of ordering legal regulations, characterised, as has been pointed out, by “greater intensity of such features as coherence, uniformity and completeness to a higher degree than *ordinary* normative acts” (Rot, 1978, p.9). Of course, it would be an oversimplification to consider this issue only from a technical-legal aspect. The process of reform, and especially of the codification of civil law, could not proceed in isolation from the reform of the whole Polish legal system (Radwański, 1993, p.207). Hence, one should take into account the broader political and legal context that accompanied the fundamental changes taking place at that time. As J. Łętowski aptly pointed out, without taking into account the political and economic environment in which a provision functions, knowledge

about its content and meaning will always be incomplete and defective (Łętowski, 1987, p.18). T. Kurowska is also right when she observes that transformations of the economic system always lead to changes in the entire legal system, in particular in the civil code, as well as in the basic laws regulating the functioning of economic life (Kurowska, 1994, p.12). Therefore, in order to give content to the notion of an agricultural holding, and at the same time to find its proper model, which is important from the point of view of many legal and agricultural normative constructions (e.g., abolition of co-ownership of an agricultural holding, donation agreement of an agricultural holding, the pre-emptive right of a tenant or co-owner of an agricultural holding), it is necessary to have a complex look at the given legal regulation in force in the given political and legal context.

### **3. The impact of the system transformation process on the notion of an agricultural holding**

The process of political and economic transformation, which began at the beginning of the 1990s, entailed numerous consequences in the form of adoption of new legal regulations concerning various areas of social and economic life. Building a market economy in an obvious and natural way brought about new economic phenomena, which at the same time had particular social resonance. This situation did not remain without influence also on the problem of shaping the agricultural system which, as a component of a broader notion of the social and economic system, underwent serious changes under the influence of general changes occurring in the social and economic system. Since the 29th of December 1989, when the act abolishing special solutions previously existing with regard to agriculture was passed, agriculture, and particularly agricultural holdings, started to be affected by the general constructions of the principle of freedom of economic activity and guarantee of property. As R. Budzinowski noticed, the situation of agricultural holdings is influenced by the whole legal system, therefore sometimes it is necessary to reach for institutions from other branches of law, especially when they influence the way legal and agricultural issues are approached (Budzinowski, 1992, p. 8). It may be appropriate to repeat here the thought of Z. Radwański that “it is obvious that in the market economy model which is taking shape in Poland, the links between civil law and other branches of law – especially administrative law, financial law and labour law – will be close in vast areas” (Radwański, 1993, p. 208). The author was convinced that any modern market economy, in order to function efficiently, would require the creation and ongoing operation of a legal infrastructure based on legal instruments that did not belong to civil law, but were closely related to it. In particular, this involved the establishment of not only independent entities operating on a stable financial basis and within the limits set by

the general interest of society, including considerations of environmental protection. Relating these obvious remarks to the issue of influence of the whole system of law on an agricultural holding, it suffices to remind that modern legal solutions give an agricultural holding a double role: productive and protective in terms of respect for the environment, making both of them an equal object of interest of agricultural law, which has also a significant social dimension (Tomkiewicz, 2001, p. 338). A logical consequence of such way of perceiving an agricultural holding, being an element of the agricultural system, is for example – noticed by T. Kurowska – a phenomenon of the increasingly intensive encroachment of norms from the scope of environmental law into the content of property law, which introduce – based on the rule of sustainable development – numerous limitations in the sphere of using agricultural land, defined as an “ecological function of agricultural property” (Kurowska, 2001, p. 109). An agricultural holding perceived in such a way is a part of the current model of multifunctional agriculture, determined by many premises, however, none of them plays a leading role in relation to the others. All of them are characterised by a common feature. Their “binding buckle” is a multidimensional overtone manifested in the phenomenon of inseparability of functions. Non-productive functions of agriculture are connected with its productive functions. In order to effectively and efficiently perform social, cultural, natural, service or ecological functions, agriculture must exist and operate in the production sphere of its activity (Mikołajczyk, 2012, p. 382).

#### **4. Results. The Code definition of an agricultural holding as an expression of stabilization of property**

Pursuant to the abovementioned Act of 1989, the provisions which differentiated the attitude of the state towards various types and forms of ownership were deleted. The legislator resigned from the previous decomposition of ownership and differentiated principles concerning the scope of its protection (Rudnicki, 2001, p.3). Thus, it was formally expressed that the process of implementation of the intended ownership transformations had begun and the way to introduce market economy mechanisms was opened. According to the amended provisions of the Constitution of the People’s Republic of Poland, the Civil Code was amended, by virtue of which 1) the provisions of articles 126–135 of the Civil Code, which were a recycling of the former constitutional regulations of property, were deleted, 2) the former provisions limiting the trade in agricultural property, i.e., the provisions of articles 160, 161 and 163 of the Civil Code, which determined the basic normative constructions of such trade, were repealed, 3) the basic conceptual categories of an agricultural holding (article 55<sup>3</sup> of the Civil Code) and agricultural property (article 46<sup>1</sup> of the Civil Code) were introduced into the Code. Against this background, J. Ignatowicz

pointed out that in this way the postulate of conducting a reform aiming at “such corrections of the code which are already indispensable for the realization of the economic reform” was fulfilled (Ignatowicz, 1991, p. 23). Detailing this point of view, Z. Radwański wrote that “this procedure led to the removal of the “socialist layer” from the code, which included in particular the socialist concept of ownership and specific relations between units of the socialised economy, which were subject to central management. In this way a dam limiting the application of traditional civil law institutions contained in the Civil Code, and shaped on the model of a market economy operating in a democratic state, was removed” (Radwański, 1993, p.198). While the 1990 amendment of the Civil Code led to the removal of the “socialist layer” from the Code, including in particular the concept of ownership, it preserved the principle of civil law unity, as well as an internal differentiation within the scope of agricultural law regulation (Jeżyńska & Oleszko, 2002, p.129). However, a general recognition of the need to carry out the “cleansing” of reforms mentioned here was accompanied by dissatisfaction with the existing state of civil law (Radwański, 1993, p. 199). Also, the abolition of restrictions on trading in agricultural real estate *inter vivos* has already had its numerous justifications and assessments. A clearly critical position in this matter was represented by M. Błażejczyk who emphasised that the resignation from control over trade in agricultural real estate puts Poland in a situation of a country which differs from the generally accepted in the countries of Western Europe tendency to create family farms (Błażejczyk, 1990, p.2). Accepting such a point of view, A. Lichorowicz (Lichorowicz, 1991) stated even more emphatically that the abolition of restrictions on trading constituted a form of substitute provision by the authorities which were not able to provide farmers with effective economic assistance. In the author’s opinion, one cannot talk about the modernization of agriculture, the formation of a proper agrarian structure without ensuring the state’s interference at least in the key issues related to the agricultural land trade. It is another matter that this interference, depending on the situation, may be more or less intensive. However, according to A. Lichorowicz, it is difficult to imagine a situation in which it would be completely excluded from the competence of state bodies. Acknowledging the correctness of the above-quoted fears expressed in connection with the liberalization of trade in agricultural real estates, K. Stefańska noticed also positive aspects of the new legal situation, especially in the scope of shaping the area structure of agricultural holdings. Emphasising the importance of social, economic and psychological premises, the author pointed out that “the liberalization of legal solutions may be accepted here, but on the assumption that it will favour the harmonization of all production factors in an agricultural holding” (Stefańska, 1992, p. 33).

Referring with understanding to the doctrinal disputes of that time, in summing up this thread of considerations, it should be stated that this problem is a very complex one and, at the same time, it is not a purely theoretical matter, but it touches

upon dilemmas which are important from the point of view of interpretation and practice of law application. As it was rightly pointed out by J. Ignatowicz, the problems connected with the management of agricultural real estate are of significant importance and this has not been changed by the considerable liberalization of provisions on trade in and inheritance of agricultural holdings made in 1990 (Ignatowicz, 1991, p. 32). It might be also appropriate to recall here the opinion of S. Prutis who, making an attempt to assess the existing legal state, wrote that “the legal state in the sphere of trade in agricultural real estate shows, from the point of view of the function of agricultural law as an active instrument of agricultural policy, the features of a classic transitory stage – the stage of reconstruction of the economic system. The aim of system transformation of the whole economy (including state agriculture) is privatisation (including re-privatisation) with ensuring the principle of economic freedom. Therefore, it is difficult, in the absence of precise programmes of agricultural policy, to maintain the system of prohibitions and restrictions in the sphere of private agricultural property, which resisted various concepts of society for so long. Therefore, the liquidation of restrictions in the sphere of agricultural property disposal means a very significant appreciation of the psychological aspect of private land ownership. This aspect of property also has a socio-political significance (Prutis, 1999, p. 99). In conclusion, it should be stated that the issues related to agricultural real estate trade are an element of a complex and extensive problem which belongs to the field of interest and research of both legal sciences and other social sciences – economics, sociology, and statistics. Thus, they constitute a fragment of a complicated interdisciplinary problem. Therefore, the legislator must consider and take into account all factors and find such an optimal solution which on the one hand would not try to close the way to the inevitable operation of economic laws and on the other hand would push the processes occurring in the sphere of individual ownership of land in such a direction that they would not be detrimental to the public interest (Piąkowski, 1967, p. 12).

It is a truism to state that the regulation of legal and agricultural trading must simultaneously take into account two elements: 1) functions which this turnover is supposed to fulfill, 2) aims which we want to achieve through this turnover. S. Wójcik is right when he points out that if through trading in agricultural holdings we want to achieve certain goals that have been established in advance, it means that this trading must to some extent be subject to special regulations and thus it must be limited to some extent. In this special regulation of trading in real estate and agricultural holdings it is necessary, in the author’s opinion, to be unambiguous and consistent (Wójcik 1993, p. 330).

The amendment of the system of trade in agricultural real estate was an exponent and consequence of the political and economic changes which took place in Poland after 1989. Referring to the opinion of J. Łętowski, it should be stressed that the very amendment of the Civil Code in 1990 in the part concerning trade in agricultural

real estate was an expression of a more general legislative tendency which can be described as “less law (i.e., deregulation) and leaving more areas to the free action of people and giving more flexibility to the regulations” (Łętowski 1989, p. 16). At the same time, the resulting legal state justified the question about the model of an agricultural holding.

There is a well-known opinion, according to which as a result of liberalization of the principles of trade in agricultural real estate, the basic conceptual categories of this trade – agricultural real estate and farms, despite their inclusion in the Civil Code, have lost their practical meaning (Wierzbowski, 2008, p. 30). This point of view is also confirmed by other doctrine representatives. Referring to this issue, B. Jeżyńska and A. Oleszko in the context especially of influence of these notions on structural changes of agricultural property, pointed out that “the statutory definition of agricultural real estate (article 46<sup>1</sup> of the Polish Civil Code) and an agricultural holding (article 55<sup>3</sup> of the Polish Civil Code) introduced to the Civil Code has not changed much when it comes to the practice of trading in agricultural holdings (...). On the contrary, especially against the background of the latest jurisprudence of the Supreme Court one can observe a characteristic in this respect lack of determination as to the adoption of legal criteria delimiting such basic agricultural law notions as: agricultural real property and agricultural holding” (Jeżyńska & Oleszko, 2002, p.129). Referring to the previous comments, I do not share the above concerns. In my opinion, for the proper reading of the content of the provisions of Article 46<sup>1</sup> and Article 55<sup>3</sup> of the Civil Code it is justified to take into account a broader political and legal context. The very approach to the problem in a broader historical perspective allows us to notice that the civil law regulation concerning an agricultural holding resulted from a significant evolution. Particular provisions concerning the transfer of ownership of agricultural real estates, the abolition of co-ownership of such real estates and the inheritance of agricultural farms were included in the Civil Code almost at the end of works on preparation of this codification. It was dictated by the conviction that such important civil law norms should be included in the civil code. This decision was motivated not only by the idea of completeness of this legal act, but also by considerations of a practical nature, so as not to separate specific (civil law) norms from the general provisions contained in the code. The introduction of fundamental notions of the agricultural law into the Civil Code in 1990 was a consequence of the evolutionary process noted here, in the light of which remarks depreciating the meaning of this circumstance can be regarded as at least questionable. Placing the definition of agricultural real estate and an agricultural holding in the Civil Code was undoubtedly a response to demands made earlier but at the same time it was also a manifestation of an effort to stabilize ownership and to increase the level of its protection (Wójcik, 1983, p. 44). This is how I interpret the meaning of the acts changed at the beginning of the political transformations, which were important from the point of view of structural changes of agricultural

ownership and shaping of agricultural production space. This broader political and legal context is determined first of all by the amendment of the Constitution adopted in 1989, which, emphasising the basic assumptions of the market economy under construction, i.e., the principle of economic freedom and equal protection of all forms of ownership, also pointed out the role of law in the new socio-economic reality. From this point of view, changes in legal regulations concerning trade in agricultural holdings adopted at that time become legible, clear and justified. The amendment to the Civil Code adopted in 1990 confirmed the direction initiated in the 1980s of strengthening the protection of ownership of individual agricultural holdings by reducing administrative interference. Thus, it was a formal expression of protection of the property interests of farmers and in this sense, it met social expectations (Stefańska 1998, p. 120). “Anchoring” such fundamental notions of the agricultural law in the Civil Code, being an act of fundamental character from the point of view of ownership trade in agricultural real estates, testified rather to the appreciation of these notions than to the “loss of their practical meaning”. If from a formal legal point of view the Civil Code does not differ from other laws, because the Constitution does not reserve any special position for it, the doctrine of law attributes to it a special role in the legal system (Radwański, 2006, p. 20). By its very nature, the Civil Code is a legal act that stabilises the sphere of regulated social and economic relations, and creates juridical constructs of fundamental importance for the whole civil law. At this point, we can also mention the findings made by R. Budzinowski on the background of the codification of the agricultural law. Referring to the statements of R. Budzinowski, let us notice that none of the versions of the agricultural code gained acceptance, because, as it was claimed, the agricultural code constituted a “conglomerate” of various legal acts, as well as fragments taken out from the Civil Code. The removal of “agricultural” provisions from the Civil Code would weaken the significance of this legal act (Budzinowski, 2001, p. 36). The critical evaluation of the drafts of the agricultural code was also justified by the conviction that these “agricultural” provisions “are at least as deeply rooted in the general discipline of civil law and cannot be removed from it” (Grzybowski, 1974). Against this background, E. Łętowska and Z. Radwański, emphasising that the Civil Code should also continue to cover agricultural issues, later stated that “it does not seem that the basic task of agricultural policy, which at present is to strengthen the ownership of farms and to develop their production function, can be effectively implemented outside the Civil Code. We think that it is the norms of the Civil Code that enjoy the greatest solemnity and are best able, consistently with the entire system of civil law, to regulate the civil issue of the said farms, and especially to strengthen the rights of peasants who farm” (Radwański & Łętowska 1985, p. 6–7). From this point of view, the very fact of including the notion of a farm in the Civil Code was characterised by a certain significance. In such an approach, this notion undoubtedly gained in importance.

While acknowledging the accuracy of defining the indicated concepts in the Civil Code, it is also worth noting their placement in the part of the Code that deals with “property”. This circumstance may also be read as an expression of an effort to adapt these concepts to new socio-economic conditions. Taking into account a broader political and legal context, it would be difficult to make an assumption that the legislator, placing general normative constructions of an agricultural holding (and agricultural real estate) in the Civil Code and adopting such a far-reaching liberalisation of trade in agricultural real property, at the same time lost interest in agricultural holdings as units of agricultural production. According to K. Stefańska, the existing legal state was rather conducive to launching certain adjustment processes within individual agricultural holdings. The author argued that the restriction of individual agricultural property for years in the sphere of, e.g., disposal of agricultural real estate, led to many unfavourable phenomena. Hence, the legislator has rightly recognised that the liberalization of trade in agricultural real estate can be a measure aimed at the realization of economic goals. Against this background, the author wrote that “the basic notions of agricultural law, such as “agricultural real estate” and “agricultural holding” set (...) a “productive” direction for the legislation, which is to concern the functioning of individual agricultural holdings”. We also know the author’s statements, in which she emphasised the principle of searching for such legal means of influencing an individual farm by the state, which “while guaranteeing individual ownership, would at the same time stimulate economic development” (Stefańska, 1990, p.54).

## 5. Conclusions and Recommendations

The conducted considerations, presenting the issue of code foundations in the scope of defining an agricultural holding against the background of the recently put forward postulate of codification of the agricultural law, entitle to formulate some general conclusions.

Firstly, the legal definition of an agricultural holding included in Article 55<sup>3</sup> of the Civil Code is important in the sense that this notion is used in many provisions of the Civil Code (e.g., Article 166 of the Civil Code concerning the pre-emptive right of a co-owner of an agricultural real estate, Articles 213–218 of the Civil Code concerning the abolition of co-ownership of an agricultural real estate and an agricultural holding, Article 554 of the Civil Code concerning prescription of claims of the owners of an agricultural holding from the sale of agricultural products, Article 981<sup>1</sup> of the Civil Code indicating an agricultural holding as an object of a legacy, and Article 1058 and subsequent articles of the Civil Code regulating the inheritance of agricultural holdings in case of inheritance opened until 14.02.2001). This definition is also used in the provisions of other legal acts (e.g., in the Act on shaping

the agricultural system, in the provisions determining the mode and conditions of granting and paying financial aid for operations financed from the resources of the European Agricultural Fund for Rural Development under the Rural Development Programme for 2014–2020<sup>2</sup>). It should be noted, however, that specific provisions do not always use the definition of an agricultural holding within the meaning of Article 55<sup>3</sup> of the Civil Code, but separate definitions are introduced (e.g., in the Agricultural Tax Act or the Act on Social Insurance of Farmers), which means that the definition from the Civil Code is not universal in the legal system.

Undoubtedly, the definition of an agricultural holding contained in article 55<sup>3</sup> of the Civil Code is of fundamental importance in the field of civil law relations (Wojciechowski, 2019, p. 198). Moreover, the meaning of this definition goes far beyond the Civil Code itself (Stefańska, 2012, p. 302).

Secondly, the “anchoring” of the fundamental notion of agricultural law in the Civil Code – a kind of organic law of private law, testified to the appreciation of this notion. Among all civil codes of post-socialist countries, the Polish Civil Code occupies a special place. Its creators have managed to create a flexible tool, easily adaptable to the needs of the times, which, having been cleared of socialist trappings, rebuilt and supplemented, and worked well at the beginning of the 21st century. Unfortunately, numerous amendments led to its internal decomposition and creation of specific provisions regulating general, economic, consumer or agricultural trade. Additionally, there are numerous special acts regulating specialized branches of private law (Stec, 2015, p. 43). In this context it is impossible not to mention the act on shaping the agricultural system with its restrictive model of trading in agricultural real estates and family agricultural holdings.

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2 Many provisions stipulate that aid is granted to a farmer who is the holder of an agricultural holding within the meaning of Article 55<sup>3</sup> of the Civil Code, while usually additional criteria concerning this holding are specified, e.g. “covering at least 1 ha and no more than 300 ha of arable land, orchards, permanent meadows, permanent pastures, developed agricultural land, land under ponds or land under ditches” – so § 2(1)(1)(a) of the Regulation of the Minister of Agriculture and Rural Development of 21.08.2015. On detailed conditions and procedures for granting and paying financial aid for operations of the type “Modernization of agricultural holdings” under the sub-measure “Support for investments in agricultural holdings” covered by the Rural Development Programme for 2014–2020 (Journal of Laws, item 1371, as amended); similarly, § 2.1.1(a) of the Regulation of the Minister of Agriculture and Rural Development of 6.07.2017 on the detailed conditions and procedures for granting and paying financial aid for operations of the type “Investments in holdings located in Natura 2000 areas” under the sub-measure “Support for investments in agricultural holdings” covered by the Rural Development Programme for 2014–2020 (Journal of Laws, item 1469); § 2.1.1(a) of the Ordinance of the Minister of Agriculture and Rural Development of 23.10.2015 on the detailed conditions and procedures for granting and paying financial assistance for operations of the type “Investments in farms located in OSN areas” under the sub-measure “Support for investments in agricultural holdings” covered by the Rural Development Programme for 2014–2020 (Journal of Laws, item 1795 as amended).

The Civil Code, with the core of legal and agricultural regulations embedded within it, does not currently constitute a uniform work. This situation may give rise to concern. Order, proper systematics, consistency, and coherence are the features that guarantee certainty of law, stability and predictability of its application. Against this background, the question arises as to whether the present state of affairs only requires tidying up – a review of the existing solutions and a possible cleansing of the Civil Code of its unsuccessful embroilments, or perhaps it has ceased, as a law still rooted in the era of great codifications, to meet the needs of the present day, which would justify its replacement with a new law? (Stec & Załuski, 2015, p. 13).

It seems, however, that the current state of civil law research does not make it possible to reach an unambiguous conclusion about the need for a new civil code. The opinions of both proponents and opponents of recodification are based more on intuition than facts. P. Stec is right when he indicates that extensive doctrinal and empirical research on the state of contemporary private law is needed. This should be supported by comparative law research on the recodification of law in post-socialist countries and the adjustment of western European civil law to contemporary requirements (Stec, 2015, p. 43).

Referring these observations to the attempt to elaborate the Agricultural Code signalled by the government, one should probably consider it as premature. It would be extremely important from the point of view of “agricultural” codification to determine the relation of the constructed project to the civil code in force. This problem was noticed by R. Budzinowski. The author signalled that civil codes of various countries also contained norms concerning agriculture, often considerably extended. That is why in the projects of agricultural codes it was either assumed that agricultural regulations would be excluded from the civil code (as, for example, in the draft of the agricultural code in France of 1814 and in the Polish drafts of the first half of the seventies), or it was referred (as in the French *code rural* and in the Italian project *codice agricolo*) to some important provisions of the Civil Code, thus “anchoring” agricultural regulations in the norms of the Civil Code.

The former solution, which is rather less frequent, implies a reconstruction of the existing structure of the normative order, a departure from tradition and the experience already gained, and a severance of ties with the existing institutions of civil law. The latter, on the other hand, respects the existing structure. It does not destroy the unity of civil law, it allows the use of the civilisation *acquis* and of the experience of law application, and at the same time it does not exclude the possibility of taking into account in the new codification the specificity of legal and agricultural regulations. This possibility is not weakened by references in the agricultural code (as in France) or in the draft of such code (as in Italy) to important regulations of the Civil Code. The second solution is, according to R. Budzinowski, more rational. Whereas “anchoring” regulations of the agricultural code in the civil code testifies to the fact that the “core” of regulation of the agricultural law lies in the civil law (which

is clearly visible against the background of Italian experiences) (Budzinowski, 2008, p. 25–26).

Thirdly, scientific integrity dictates to admit that it is difficult to point to arguments which, in an unambiguous and unquestionable manner, speak in favour of keeping the provisions on trading in agricultural land in the Civil Code or removing them from it.

In the dilemma whether to keep in the Civil Code the regulation of trade in agricultural land (including its conceptual network with the agricultural holding at the forefront) or to transfer it to a special act (or perhaps even to the Agricultural Code), it is impossible to point to the only right and possible solution. As the legislative practice of Western European countries shows, on the basis of both solutions it is possible to create a correctly functioning regulation of trade in agricultural land for decades. This depends mainly on the merits of a given regulation, its adjustment to the specificity of structural requirements of agriculture in a given country, and finally on the correctness and consistency in application by state bodies.

In this situation, arguments of teleological nature gain importance, especially those of legislative policy. On the basis of these arguments A. Lichorowicz has rightly argued in favour of keeping the regulation of trade in agricultural land in the Civil Code rather than transferring it to a special act. According to the author, this is supported by: the rule of the code being complete, social value and range of influence of these regulations, interpretation and intertemporal facilitations connected with localization in the Civil Code and finally tradition, whose meaning cannot be underestimated (Lichorowicz, 2008, p.48). This view should be shared.

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