

On the dissonance between the legislature's actual and declared objectives of shaping the agricultural system

O dysonansie między rzeczywistymi a deklarowanymi przez ustawodawcę celami kształtowania ustroju rolnego

О диссонансе между реальными и декларируемыми законодателем целями формирования сельскохозяйственного строя

Про дисонанс між реальними та задекларованими законодавцем цілями формування аграрного устрою

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Summary: At the root of the restrictive legal regulations that were introduced in the Act of 11 April 2003 on Shaping the Agricultural System is the assumption of the special importance of agricultural real estate in the socio-economic system in Poland.

The objectives of the legislator can be reconstructed primarily based on the preamble to the Act, as well as the content of Article 1 of the UKUR. At the same time, these goals should be interpreted as a set of values and substantive requirements for the formation of the agricultural system.

The preamble to the UKUR specifies the goals that the legislature intended the regulation to achieve, in particular: to strengthen the protection and development of family farms that are the basis of the agricultural system of the Republic of Poland, ensuring the proper development of agricultural land in the country, ensuring food security for citizens and supporting diversified agricultural activities conducted in accordance with environmental requirements and conducive to rural development.

On the other hand, the provision of Article 1 of the UKUR specifies *expressis verbis* the objectives to be achieved with the use of the instrumentality provided by the law, including among them: 1) improving the area structure of farms; 2) counteracting excessive concentration of agricultural real estate; 3) ensuring that agricultural activities are carried out on family farms by qualified persons; 4) promoting the development of rural areas; 5) implementing and applying agricultural support instruments; 6) active state policy.

The tasks expressed in Article 1 of the UKUR are not consistent with the conceptual assumptions expressed by the legislator in the preamble, which are accepted as justification for the legislative activity undertaken. The juxtaposition of the content of the preamble of the UKUR and Article 1 of the UKUR with the political and legal environment in which the law operates, allows one to conclude that there has been a dissonance between the actual and revealed intentions of the legislator's action.

Key words: agricultural system, objectives of shaping the agricultural system, agricultural property, family farm, rural development, food security

Streszczenie: U podstaw restrykcyjnych regulacji prawnych, które wprowadzono w ustawie o kształtowaniu ustroju rolnego, leży założenie o szczególnym znaczeniu nieruchomości rolnych w ustroju społeczno-gospodarczym Polski. Cele ustawodawcy można zrekonstruować przede wszystkim na podstawie preambuły ustawy, jak też treści art. 1 ustawy o kształtowaniu ustroju rolnego. Cele te powinny być jednocześnie interpretowane jako zbiór wartości i merytorycznych wymogów kształtowania ustroju rolnego.

W preambule ustawy o kształtowaniu ustroju rolnego określono cele, które zgodnie z założeniami ustawodawcy ma realizować regulacja, a są nimi: wzmocnienie ochrony i rozwój gospodarstw rodzinnych stanowiących podstawę ustroju rolnego Rzeczypospolitej Polskiej; zapewnienie właściwego zagospodarowania ziemi rolnej w Rzeczypospolitej Polskiej; zapewnienie bezpieczeństwa żywnościowego obywateli oraz wspieranie różnicowanego rolnictwa prowadzonego w zgodzie z wymogami ochrony środowiska i sprzyjającego rozwojowi obszarów wiejskich.

Z kolei przepis art. 1 ustawy o kształtowaniu ustroju rolnego *expressis verbis* określa cele, które mają zostać osiągnięte przy zastosowaniu instrumentarium przewidzianego w ustawie, zaliczając do nich: 1) poprawę struktury obszarowej gospodarstw rolnych; 2) przeciwdziałanie nadmiernej koncentracji nieruchomości rolnych; 3) zapewnienie prowadzenia działalności rolniczej w gospodarstwach rodzinnych przez osoby o odpowiednich kwalifikacjach; 4) wspieranie rozwoju obszarów wiejskich; 5) wdrażanie i stosowanie instrumentów wsparcia rolnictwa; 6) aktywną politykę państwa.

Zadania wskazane w art. 1 ustawy o kształtowaniu ustroju rolnego nie są spójne z wyrażonymi przez ustawodawcę w preambule założeniami koncepcyjnymi, które przyjmowane są jako uzasadnienie dla podejmowanej działalności ustawodawczej. Zestawienie treści preambuły ustawy o kształtowaniu ustroju rolnego oraz art. 1 tej regulacji ze środowiskiem polityczno-prawnym, w którym ustawa funkcjonuje, pozwala stwierdzić, iż doszło do dysonansu pomiędzy rzeczywistymi a ujawnionymi intencjami działania ustawodawcy.

Słowa kluczowe: ustrój rolny, cele kształtowania ustroju rolnego, nieruchomość rolna, gospodarstwo rodzinne, rozwój obszarów wiejskich, bezpieczeństwo żywnościowe

Резюме: В основе ограничительных правовых норм, введенных Законом о формировании сельскохозяйственного строя, лежит предположение об особой значимости сельскохозяйственной недвижимости в социально-экономической системе Польши. Цели законодателя можно реконструировать, прежде всего, на основе преамбулы к Закону, а также содержания статьи 1 Закона о формировании сельскохозяйственного строя. Эти цели следует одновременно интерпретировать как набор ценностей и содержательных требований к формированию сельскохозяйственного строя.

В преамбуле к Закону о формировании сельскохозяйственного строя изложены цели, которые, по замыслу законодателя, должно преследовать данное регулирование, а именно: усиление защиты и развития семейных хозяйств, составляющих основу сельскохозяйственного строя Республики Польша; обеспечение надлежащего управления земельными ресурсами сельскохозяйственного назначения в Республике Польша; обеспечение продовольственной безопасности граждан; поддержка многоотраслевого сельского хозяйства, функционирующего в соответствии с требованиями охраны окружающей среды и способствующего развитию сельских территорий.

В свою очередь, положение статьи 1 Закона о формировании сельскохозяйственного строя *expressis verbis* определяет цели, которые должны быть достигнуты с использованием инструментов, предусмотренных Законом, в том числе: 1) улучшение территориальной структуры хозяйств; 2) противодействие чрезмерной концентрации сельскохозяйственной недвижимости; 3) обеспечение ведения сельскохозяйственной деятельности в семейных хозяйствах лицами, имеющими соответствующую квалификацию; 4) поддержка развития сельских территорий; 5) внедрение и применение инструментов поддержки сельского хозяйства; 6) активная государственная политика.

Задачи, обозначенные в статье 1 Закона о формировании сельскохозяйственного строя, не соответствуют концептуальным посылкам, выраженным законодателем в преамбуле, которые принимаются в качестве обоснования осуществляемой законодательной деятельности. Сопоставление содержания преамбулы Закона о формировании сельскохозяйственного строя и статьи 1 данного нормативного акта с политико-правовой средой, в которой функционирует данный Закон, позволяет сделать вывод о наличии диссонанса между реальными и выявленными намерениями деятельности законодателя.

Ключевые слова: сельскохозяйственный строй, цели формирования сельскохозяйственного строя, сельскохозяйственная недвижимость, семейное сельское хозяйство, развитие сельских территорий, продовольственная безопасность

Резюме: В основі обмежувальних правових норм, запроваджених Законом про формування аграрного устрою, лежить припущення про особливу важливість сільськогосподарської нерухомості в соціально-економічній системі Польщі. Цілі законодавця можна реконструювати, насамперед, на основі преамбули до Закону, а також змісту статті 1 Закону про формування аграрного устрою. Ці цілі слід одночасно інтерпретувати як набір цінностей та змістовних вимог до формування аграрного устрою.

У преамбулі Закону про формування аграрного устрою визначено цілі, які, згідно з припущеннями законодавця, має реалізувати закон, а саме: посилення захисту та розвитку сімейних фермерських господарств, що становлять основу аграрного устрою Республіки Польща; забезпечення належного управління сільськогосподарськими землями в Республіці Польща; забезпечення продовольчої безпеки громадян та підтримка диверсифікованого сільського господарства, яке ведеться з дотриманням вимог охорони довкілля та сприяє розвитку сільських територій.

У свою чергу, положення статті 1 Закону про формування аграрного устрою *expressis verbis* визначає цілі, які мають бути досягнуті за допомогою інструментів, передбачених Законом, серед яких 1) поліпшення територіальної структури сільськогосподарських підприємств; 2) протидія надмірній концентрації сільськогосподарської нерухомості; 3) забезпечення ведення сільськогосподарської діяльності в сімейних господарствах особами, які мають відповідну кваліфікацію; 4) підтримка розвитку сільських територій; 5) впровадження та застосування інструментів підтримки сільського господарства; 6) активна державна політика.

Завдання, зазначені у статті 1 Закону про формування аграрного устрою, не узгоджуються з концептуальними припущеннями, висловленими законодавцем у преамбулі, які прийняті в якості обґрунтування здійснюваної законодавчої діяльності. Зіставлення змісту преамбули Закону про формування аграрного устрою та статті 1 цього нормативно-правового акту з політико-правовим середовищем, в якому функціонує Закон, дозволяє зробити висновок про дисонанс між дійсними та виявленими цілями законодавця.

Ключові слова: аграрний устрій, цілі формування аграрного устрою, сільськогосподарська нерухомість, сімейне фермерське господарство, сільський розвиток, продовольча безпека

1. Concept of agricultural system

The notion of agricultural system has no legal definition. According to an encyclopaedia entry, an agricultural system is a socio-political system and also a type of relationship of basic means of production (mainly land) ownership and their use in agriculture, and the resulting social relations between different groups of agricultural and rural population.¹

In agricultural law, this term has both narrow and broad meanings. In the narrow meaning, dominant in the interwar period, the term meant all ownership relations in agriculture, where ownership was understood as a legal form of property. In the broader sense, the agricultural system is treated as a component of the social and economic system. According to A. Stelmachowski, an agricultural system is an arrangement of ownership relations and forms of production organisation in agriculture, as well as organisational forms of the agricultural market.² Nowa-

¹ <https://encyklopedia.pwn.pl/haslo/ustroj-rolny;3991879.html> [access: 30.06.2023].

² A. Stelmachowski, in: *Polskie prawo rolne na tle ustawodawstwa Unii Europejskiej*, eds. P. Czechowski, M. Korzycka-Iwanow, S. Prutis, A. Stelmachowski, Warszawa 1999, p. 19.

days, recognising the accuracy and validity of the noted definition, it also involves another element – the concept of multifunctional development of rural areas. In accordance with this concept, agricultural policy was included in a comprehensively formulated rural development policy, taking into account the productive, social, cultural and ecological functions of rural areas.³ Multifunctionality is expressed in the diversification of agricultural activity and boosting the economic development of rural areas. The essence of this policy is to promote and support complementary activities in agriculture that guarantee additional sources of agricultural income (agrotourism, crafts, trade, souvenir production, adaptation of farm buildings for non-agricultural purposes) and to create conditions for the sustainable and balanced development of rural areas (placing the small and medium-sized industry in rural areas, infrastructure development, promotion of employment in the service sector for agriculture).⁴ The literature underlines that the model of multifunctional rural development is one of the core categories of policy concerning agriculture and rural areas in Poland, the position of which has been strengthened in the course of its evolution since the beginning of the political transformation process. The integration of the country's economy with the European Union is an important and favourable condition for the application of this concept, due to the priority of diversifying the economy of rural areas and the developed instruments of its support within the Common Agricultural Policy.⁵

Thus, the notion of agricultural system goes beyond the type of relations between the basic means of production (mainly land) which, in turn, is often referred to as agrarian structure or land ownership system. Obviously, neither the agricultural system nor the agrarian structure are constant or unchangeable. On the contrary, they undergo significant changes under the influence of general transformations in the social and economic system of the country. These changes may be revolutionary or evolutionary.⁶

³ J. Mikołajczyk, *Współczesne funkcje obszarów wiejskich na tle koncepcji multifunkcjonalnego rolnictwa*, *Studia Iuridica Agraria* 2012, vol. 10, pp. 367–384.

⁴ E. Tomkiewicz, in: *Prawo rolne*, ed. A. Stelmachowski, Warszawa 2008, p. 544.

⁵ M. Adamowicz, M. Zwolińska-Ligaj, *The Concept of Multifunctionality as an Element of Sustainable Development of Rural Areas*, SGGW Scientific Papers, European Politics. Finance and Marketing 2009, no. 2 (51), p. 11.

⁶ K. Marciniuk, *Pojęcie własności rolnej w kontekście regulacji dotyczących kształtowania ustroju rolnego i przemian struktury agrarnej*, in: *Kwestia agrarna. Zagadnienia prawne i ekonomiczne*, ed. P. Litwiniuk, Warszawa 2016, pp. 112–113.

There is no doubt that the recently adopted amendments⁷ to the Act of 11 April 2003 on Shaping the Agricultural System⁸ are revolutionary changes. The Act on Shaping the Agricultural System has introduced far-reaching legal rationing in reference to agricultural real estate. Trading in these properties – based on various legal events – is subject to significant restrictions.

2. Objectives of shaping the agricultural system

Underlying the restrictive legal regulations introduced in the Act on Shaping the Agricultural System is the assumption of a special significance of agricultural real estate in the social and economic system in Poland.

This point of view is confirmed by the justification of the bill, which reads:

Agricultural property (farmland) is the most important means of food production and of fulfilling the fundamental obligation to feed the entire population. The properties enabling the agricultural use of land are not universal, permanent or unchangeable. The progress of civilisation, urbanisation processes and climate changes result in the resources of agricultural land decreasing fairly quickly due to changes in their purpose, degradation of their productive properties or total devastation of the environment. For these reasons, agricultural land should be treated as a non-marketable public good and as such should be subject to special legal regulations. As a rule, legal protection should be implemented as quantitative protection, aiming at maintaining the existing area of agricultural land and ensuring its proper use, and as qualitative protection, aiming at not deteriorating the soil production properties and restoring the lost properties of agricultural land. Also, provisions laying down rules and procedures for trade in agricultural property have a protective character. In view of the above, it is necessary to introduce appropriate legal provisions which will allow for the proper distribution of agricultural real estate as a non-monetisable public good.⁹

⁷ These are the changes introduced by: the Act of 14 April 2016 on the Suspension of Sale of Real Property of the Agricultural Property Stock of the State Treasury and Amendments to Certain Acts, Journal of Laws 2016 item 869 (hereinafter: the Suspension Act), and the Act of 26 April 2019 amending the Act on Formation of the Agricultural System and Certain Other Acts, Journal of Laws 2019 item 1080.

⁸ Act of 11 April 2003 on Shaping the Agricultural System, consolidated text: Journal of Laws 2022 item 2569 (hereinafter: UKUR).

⁹ Justification of the Bill on the Suspension of the Sale of Properties of the Agricultural Property Stock of the State Treasury and on the Amendment of Certain Acts, 8th Sejm, Sejm print no. 293, 4.03.2016, www.sejm.gov.pl, pp. 1–2.

The goals of the legislator can be reconstructed primarily based on the preamble to the Act, as well as the content of Article 1 of the UKUR. These goals, according to E. Klat-Górska, should be simultaneously interpreted as a set of values and substantive requirements for shaping the agricultural system.¹⁰

2.1. Objectives resulting from the preamble of the Act on Shaping the Agricultural System

After several years of the Act on the Formation of the Agricultural System being in force, on the occasion of the amendment made in April 2016, the legislator decided to supplement the text of the Act with a preamble which is to specify the declared objectives of the regulation. According to the added preamble, the Act on the Shaping of the Agricultural System was enacted “to strengthen the protection and development of family farms, which under the Constitution of the Republic of Poland constitute the basis of the agricultural system of the Republic of Poland” (Article 23), as well as “to ensure the proper management of agricultural land in the Republic of Poland, to ensure food security for the citizens and to support sustainable agriculture conducted in accordance with the requirements of environmental protection and fostering the development of rural areas.” However, as K. Marciniuk points out, there are no provisions in the text of the Act that would serve the fulfilment of at least some of the declared objectives of the regulation (e.g., there are no provisions concerning the promotion of sustainable agriculture conducted in accordance with the environmental requirements).¹¹ A similar point of view is presented by T. Czech, indicating that this declaration, however, is not reflected in reality.¹²

Analysing the political and legal premises accompanying the regulation and determining the character of the preamble of the UKUR from the perspective of the types of preambles distinguished in the literature, it should be pointed out that in this case, it is a motivational preamble, indicating the reason for issuing a legal act.¹³ In the motivational preambles, the legislator explains the motives of their action,

¹⁰ E. Klat-Górska, *Ustawa o kształtowaniu ustroju rolnego. Komentarz*, Warszawa 2014, p. 31.

¹¹ K. Marciniuk, in: *Prawo rolne*, ed. P. Czechowski, Warszawa 2019, p. 229.

¹² T. Czech, *Kształtowanie ustroju rolnego. Komentarz*, Warszawa 2020, p. 20.

¹³ For more on this topic see: S. Lewandowski, *Charakter normatywny preambuły*, *Studia Iuridica* 1998, vol. 36, pp. 131–134. The author divides preambles into four types and distinguishes substantive, motivational, historical and ethical preambles.

although the actual motives may not coincide with the revealed motives of the regulation. The primary objective declared in the preamble is to strengthen the protection and development of family farms. They are to – in accordance with the first sentence of Article 23 of the Constitution of the Republic of Poland¹⁴ – constitute the basis of the agricultural system of the Republic of Poland.

The preamble of the UKUR may be defined as: 1) a complex preamble, encompassing the purpose of the Act and its constitutional legal basis, 2) a complete preamble, which is not limited to one element, but indicates almost all the elements that are usually found in preambles and result from the above-mentioned definition of the concept. The preamble of the UKUR is a preamble in the formal sense, i.e., one that constitutes the part of a normative act following the title and preceding the articulated part.¹⁵ At the same time, however, the last of the indicated types draws attention to the material meaning of the preambles. As noted by M.E. Stefaniuk: "The preamble in the material sense takes the form of numbered articles or paragraphs with content that could just as well be found in the preamble. Usually, it is Art. 1 or 2, in which the aim of the normative act is first indicated in a general way, and then the detailed tasks to be performed are listed."¹⁶

Applying these observations to the Act on Agricultural Real Estate, one may formulate a conclusion that Article 1 of the regulation contains a preamble in a substantive sense. The provision of Article 1 of the Act defines the principles of shaping the agricultural system, as well as objectives guiding the legislator. Hence, the division of preambles into formal and substantive types is not of a separable nature in the case of the Act. The analysed Act has features of both types of preambles. It is another matter whether in the substantive sense, i.e., that resulting from Article 1 of the UKUR, the preamble would be helpful in decoding the main intentions of the legislator.¹⁷

However, with the addition of the preamble to the text of the Act, Article 1, which defines its objectives, was not changed. Nevertheless, the preamble strengthened the meaning of this provision. This raises the question as to whether the restrictive provisions of the Act which make it more difficult to acquire agricultural real estate, cover with their scope such legal instruments that fulfil the assumptions

¹⁴ Constitution of the Republic of Poland of 2 April 1997, Journal of Laws 1997 no. 78, item 483 as amended.

¹⁵ J. Mikołajczyk, *Functions of the Preamble in the Act on Shaping of the Agricultural System*, *Studia Iuridica Lublinsia* 2017, vol. 26, no. 1, p. 134.

¹⁶ M.E. Stefaniuk, *Preambula aktu normatywnego w doktrynie oraz w procesie stanowienia i stosowania polskiego prawa w latach 1989–2007*, Lublin 2009, p. 53.

¹⁷ J. Mikołajczyk, *Functions of the Preamble...*, p. 134.

and objectives of the Polish agricultural real estate tax exemption expressed in its preamble and Article 1.

2.2. Objectives resulting from Article 1 of the Act on Shaping the Agricultural System

Pursuant to Article 1, the Act determines the principles of shaping the agricultural system of the state through:

- 1) improving the area structure of agricultural holdings;
- 2) preventing excessive concentration of agricultural real estate;
- 3) ensuring that agricultural activity on agricultural holdings is carried out by persons with appropriate skills;
- 4) promoting rural development;
- 5) implementing and using agricultural support instruments;
- 6) an active state agricultural policy.

E. Klat-Górska is right when she points out that the phrase “an act determines the principles of shaping the agricultural system of the state by [...]” has been used, on the one hand, in a descriptive sense, as a certain general definition of a set of postulates determining the direction for both law-making actions (indicating not only what states of affairs the legislator should achieve, but also what values they should not infringe), as well as for the process of applying legal regulations.¹⁸ On the other hand, the legislator has indicated what aims should be taken into account in agricultural real estate trade in connection with shaping the agricultural system of the state by means of legal norms.¹⁹

In the justification of one of the more spectacular judgements concerning the issue at hand, one can read that “The introduction into force of the Act of 11 April 2003 on Shaping the Agricultural System was dictated by the legislator’s intention to regulate agricultural trade through mechanisms leading to the improvement of the area structure of agricultural holdings, counteracting the excessive concentration of agricultural real estate and ensuring that family holdings are run by persons with appropriate qualifications. The adopted solutions are to ensure a source of income for agricultural families and to contribute to the improvement of living

¹⁸ E. Klat-Górska, *Ustawa o kształtowaniu...*, p. 30.

¹⁹ G. Bieniek, *Kształtowanie ustroju rolnego*, in: *Nieruchomości. Problematyka prawna*, eds. G. Bieniek, S. Rudnicki, Warszawa 2011, p. 136.

standards in rural areas by means of enlarging family farms.”²⁰ Therefore, it is worth having a closer look at the aims of shaping the agricultural system outlined by the legislator.

2.2.1. Improvement of the area structure of agricultural holdings

The area structure of agricultural holdings depends on many factors, including natural, social, economic and cultural determinants.²¹ In economic and agricultural literature, it is often emphasised that one of the main reasons which hinders the development of Polish agriculture is the fragmentation of the agrarian structure.²² Due to a high percentage of very small farms (up to 2 ha of agricultural land) and small farms (2–5 ha), Poland is characterised by one of the less favourable farm area structures among EU countries. Therefore, it is necessary to take measures aimed at increasing the area of farms with a simultaneous increase in their productivity, especially in the context of possibilities of Polish agricultural holdings to compete with EU farms.²³ However, so far, no research method has been developed that would make it possible to search for the relationship between a specific legal tool and its influence on the change of farm area structure.

Measures aimed at improving the area structure of agricultural holdings are of a varied nature. This category includes solutions aimed at limiting trade in agricultural real estate. They make it possible to preserve an appropriate agricultural area through the application of area standards (which are to shape the size of agricultural holdings, counteract their irrational division, or prevent the excessive concentration of agricultural real estate²⁴) and entrust the National Agricultural Support Centre (hereinafter referred to as KOWR) with powers related to exercising

²⁰ Judgment of the Supreme Court of 20 August 2018, IV CSK 455/17, LEX no. 2577319.

²¹ Z. Truszkiewicz, *Adekwatność instrumentów prawnych kształtowania ustroju rolnego*, Przegląd Prawa Rolnego 2019, no. 2, p. 76.

²² Agrarian structure – according to the EU doctrine – is a set of factors that affect agricultural production, the level of income of agricultural producers and the productivity of their labour. As cited in: A. Lichorowicz, *Harmonizowanie polskiego ustawodawstwa strukturalnego w rolnictwie z ustawodawstwem Unii Europejskiej (na przykładzie prawnego pojęcia gospodarstwa rolnego)*, Państwo i Prawo 1996, no. 4–5, p. 131.

²³ For more on this topic, see: J. Bożek, J. Szewczyk, *Struktura obszarowa gospodarstw rolnych w Polsce na tle innych krajów Unii Europejskiej*, Wiadomości Statystyczne. The Polish Statistician 2020, vol. 65, no. 9, pp. 48–62.

²⁴ K. Stefańska, *Normy obszarowe jako kryterium określenia terminu „nieruchomość rolna” i „gospodarstwo rolne” (zagadnienia wybrane)*. For more on this topic, see: R. Michałowski, *Normy obszarowe w obrocie nieruchomościami rolnymi*, Studia Iuridica Agraria 2007, vol. 6, pp. 156–169.

pre-emptive rights and purchasing agricultural real estate. The issue of direct prerequisites for introducing particular solutions or their effectiveness remains an open question.

Undoubtedly, the aim of the Act on Shaping the Agricultural System should be the creation of strong and economically stable farms operating as family farms.²⁵

In order to be effective, the pursuit of improvement of the area structure of Polish agricultural holdings cannot be reduced exclusively to the regulation of trade in agricultural real estate. Such an approach allows to significantly reduce the negative process of area fragmentation of agricultural holdings. However, it is not enough to build positive tendencies in the area development of Polish agricultural holdings. Therefore, the existence of instruments stimulating undertaking investment activities by farmers (e.g., in the sphere of legal and tax instruments) is justified, including mainly through increasing the area of managed agricultural holdings.²⁶

The analysis of legal instruments influencing how the agrarian structure is shaped shows that they do not constitute a coherent, logically constructed system. Individual legal acts, the provisions of which stimulate the area structure of agricultural holdings even indirectly, are treated by the legislator instrumentally, but not with a view to building a rational, comprehensive and coherent system of state influence on changes in this structure. The entry into force of the UKUR has been assessed in literature as the first step towards the creation of a consistent legal instrument which could lead to permanent positive changes in the agrarian structure.²⁷ At the same time, however, definition problems with reference to basic conceptual categories of the Act – the notions of agricultural holding and family holding, and above all, doubts with reference to the so-called lower area standard (defined *de lege lata* at the level of not less than 1 ha of the area of agricultural real property or the total area of agricultural holding) do not allow one to define an optimal area structure.²⁸

Analysing statistical data, Z. Truskiewicz pointed out that in 28 years (between 1990 and 2018), the average total area of an individual agricultural holding increased from 7.1 ha to 10.8 ha (by 3.7 ha), and the average area of agricultural land in these holdings increased from 6.3 ha to 9.7 ha (by 3.4 ha). In 2003 (the year in which the Act on Agricultural Holdings came into force), these standards were

²⁵ D. Łobos-Kotowska, M. Stańko, *Ustawa o kształtowaniu ustroju rolnego. Komentarz*, Warszawa 2020, p. 25.

²⁶ P. Popardowski, in: *Prawo rolne. Obrót nieruchomościami rolnymi. Komentarz*, vol. 9, ed. P. Popardowski, Warszawa 2021, p. 97.

²⁷ P.M. Kosmęda, *Zmiany w strukturze obszarowej i własnościowej gospodarstw rolnych po wejściu w życie nowelizacji kodeksu cywilnego z 28 lipca 1990 r.*, *Studia Iuridica Agraria* 2010, vol. 8, p. 77.

²⁸ D. Łobos-Kotowska, M. Stańko, *Ustawa o kształtowaniu...*, p. 24.

7.4 ha and 8.2 ha, respectively. The quoted data confirmed Z. Truskiewicz's conviction that the Act on Agricultural Holdings does not have any influence on the improvement of the area structure of agricultural holdings, but it generates enormous social costs and limits proprietary rights.²⁹

2.2.2. Preventing the excessive concentration of agricultural real estate

As P. Popardowski points out, the aim related to counteracting the excessive concentration of agricultural real estate (Article 1 point 2 of the UKUR) remains in close substantive relation with aiming at improving the area structure of agricultural holdings (Article 1 point 1 of the UKUR). Measures that promote building an appropriate area structure of holdings must be connected with the simultaneous elimination of threats to access to land which occur in the process of excessive concentration of agricultural real estate. This process leads to limitations in the availability of land for production needs. In this way, the development possibilities of agricultural holdings are narrowed.³⁰ The author adds that the problem of excessive concentration is related mainly to the perception of agricultural land as an attractive form of capital investment. The purchase of agricultural real estate for investment purposes is not always connected with maintaining its productive character.³¹

The very notion of "concentration of agricultural real estate" is vague and it is further narrowed by the predicate "excessive." In the case of the predicate "excessive," it is obvious and clear vagueness, where the range of vagueness of designations, about which this predicate could be pronounced, may be determined by indicating a certain limit point (the number of hectares of land above which real estate concentration may be considered excessive). But in the combination of both vague notions, there appears – as stressed by K. Czerwińska-Koral – a multidirectional fuzziness.³²

The vagueness of phrases in the legal text is undesirable, particularly in the case of orders and bans addressed to citizens. In such a situation, it may constitute grounds for challenging the regulation in question as failing to meet the requirement of

²⁹ Z. Truskiewicz, *Adekwatność instrumentów prawnych...*, p. 80.

³⁰ P. Popardowski, in: *Prawo rolne. Obrót nieruchomościami rolnymi...*, p. 98.

³¹ Ibidem.

³² K. Czerwińska-Koral, *Pojęcia niedookreślone w przepisach ustawy o kształtowaniu ustroju rolnego*, *Studia Iuridica Agraria* 2016, vol. 14, pp. 196–197.

adequate definition of the norms concerning civil rights and freedoms.³³ This point of view is confirmed by the jurisprudence of the Constitutional Tribunal. In the judgement of 12 September 2005, the Constitutional Tribunal indicated a twofold danger, which is connected with the use of undefined phrases: “the practice of application of these provisions may relatively easily be distorted, as a result of invoking such phrases, without any attempt to fill them with content resulting from the circumstances of a given case and without a reliable justification communicated to the addressees of the decision.”³⁴

Specifying the criterion of “excessive concentration” is therefore not an obvious issue. It may be assumed, however, that there is an excessive concentration of agricultural real estate when a farm, both from a material (upper area standard) and subjective point of view, loses its features of a family farm.³⁵ Defining both the lower and the upper area norm (defined *de lege lata* at the level of 300 ha of agricultural land for a family holding) is a debatable issue. In the case of application of tools by KOWR in the form of the right of first refusal and the right of purchase, the basis is not only “a directional guideline,” i.e., “an area limit serving to define a family holding and an individual farmer,” but also: the specific nature of a given region, the size of farms, their economic potential, the demand for land used to expand family farms, the area of land from the Agricultural Property Stock which can be allocated for these purposes, limiting access to agricultural land for smaller, economically weaker farms, the purchase of agricultural land from local farmers or the purpose of purchase.³⁶

2.2.3. Ensuring that agricultural activity on agricultural holdings is carried out by persons with appropriate qualifications

The literature aptly indicates that this issue must be considered at two levels.

First, agricultural land, being obviously one of the basic objects of property law in the civil sense, is at the same time a public good and subject to social obligations.

³³ M. Śliwka, *Znaczenie zwrotów niedookreślonych na tle orzecznictwa polskiego Trybunału Konstytucyjnego*, *Studia Iuridica Lublensesia* 2010, vol. 13, p. 271.

³⁴ Judgment of the Constitutional Tribunal of 12 September 2005, SK 13/05.

³⁵ D. Łobos-Kotowska, M. Stańko, *Ustawa o kształtowaniu...*, p. 26.

³⁶ Order No. 20/16 of the President of the Agricultural Property Agency of 13.05.2016 on the implementation of the pre-emptive right and the right of purchase stipulated in the Act on Shaping the Agricultural System, point VI.2.

Therefore, in order to preserve its agricultural values, it is necessary for agricultural production to be carried out by persons with appropriate qualifications.

Second, it is common for land to be sold off to non-farmer investors and holding companies. As a consequence, the business models thus created are based more on land speculation than on agricultural production.³⁷

Against this background, P. Popardowski adds that making the acquisition of agricultural real estate conditional on the acquirer having appropriate agricultural qualifications is intended to serve two purposes:

- a) a person possessing appropriate qualifications guarantees the running of a productive agricultural holding. This is because such a person has the knowledge and experience that allow them to run agricultural production properly;
- b) leaving an agricultural holding to a person having agricultural qualifications makes it possible to assume that this person will continue its production activity. For such persons, owning an agricultural holding is tantamount to having at one's disposal a factor of production suitable for the pursuit of their professional aspirations.³⁸

There is no doubt that proper use of the production potential of agricultural real estate is influenced by the real estate being purchased by persons with appropriate agricultural qualifications. Therefore, in the UKUR as a rule it is assumed that agricultural real property may be purchased only by an individual farmer (Article 2a section 1 of the UKUR), and the possession of such status depends on possessing appropriate agricultural qualifications (Article 6 of the UKUR). Therefore, Article 1 (3) of the UKUR is about qualifications and not about the potential ability of a person having any education to assimilate knowledge in the scope of agricultural production.³⁹

In the UKUR, agricultural qualifications are defined fairly broadly. They are also held by a person who does not have agricultural education, as long as they can prove at least 3 or 5 years of experience in agriculture, depending on the non-agricultural education they possess. However, experience is defined quite liberally (Article 6 section 2 item 2 and section 3 and 3a of the UKUR). In the opinion of Z. Truszkiewicz, agricultural qualifications defined in such a way are in fact a fiction which is to hinder the purchase of agricultural real estate. The author adds that even if they were more strictly defined, the requirement to have qualifications would be incompatible with economic freedom. Z. Truszkiewicz argues that there

³⁷ D. Łobos-Kotowska, M. Stańko, *Ustawa o kształtowaniu...*, p. 26–27.

³⁸ P. Popardowski, in: *Prawo rolne. Obrót nieruchomościami rolnymi...*, p. 99.

³⁹ A. Majewski, *Problematyka kwalifikacji do prowadzenia działalności rolniczej w gospodarstwach rolnych*, *Studia Iuridica Agraria* 2005, vol. 5, pp. 125–142.

are no substantial reasons, referring to the specificity of agricultural activity, for constructing the requirement of such agricultural qualifications, apart from creating formal barriers. It should also be noted that the negative effect of using agricultural qualifications is closing the agricultural environment to people from outside the agricultural sector.⁴⁰

2.2.4. Support for rural development

It is a truism to state that the functions to be performed by rural areas are economic, administrative, social and ecological. They are diverse and penetrate various spheres of life. While previously rural areas were identified exclusively with agriculture, production and the rural economy, *de lege lata* their heterogeneous character is emphasised.

As was rightly pointed out, supporting rural development is based on perceiving interactions between agricultural production and rural development. Appropriate development of agriculture in terms of production and income translates into the improved functioning of the rural area. Thus, there is a functional relationship between agricultural production and farmers' interests and the countryside and rural community. Rural area is based, therefore, on the occurrence of a complex of (social and spatial) components, for which their connection with production activity in agriculture acts as an integrating factor. This special relationship between the rural community and rural areas and agriculture is related to the fact that the effects and characteristics of rural management are directly reflected in the social conditions occurring in the area.⁴¹

These issues have been acknowledged by the Polish legislator.⁴² As an example, one can indicate here Article 2a section 4 (3) UKUR within the framework of which preferences were created for a natural person who applies for permission to purchase agricultural real estate in order to extend an agricultural holding, if this person (young farmer) has been granted assistance in starting agricultural activity

⁴⁰ Z. Truskiewicz, *Adekwatność instrumentów prawnych...*, pp. 83–84.

⁴¹ P. Popardowski, in: *Prawo rolne. Obrót nieruchomościami rolnymi...*, p. 99.

⁴² D. Łobos-Kotowska, M. Stańko, *Ustawa o kształtowaniu ustroju rolnego...*, pp. 26–27. See also: P.A. Blajer, W. Gonet, *Ustawa o kształtowaniu ustroju rolnego. Komentarz*, Warszawa 2020, p. 20. The issue is viewed differently in: T. Czech, *Kształtowanie ustroju rolnego...*, p. 21. The author indicates that: "In Art. 1 item 4 of the UKUR, support for the development of rural areas is also declared. The analysis of particular provisions of the commented Act indicates that this issue is in fact not covered by its scope."

in accordance with the provisions of the Act of 20 February 2015 on Supporting Rural Development with the participation of the European Agricultural Fund for Rural Development under the Rural Development Programme for 2014–2020.⁴³

2.2.5. Implementation and use of agricultural support instruments

Agricultural support instruments are mechanisms (legal tools) used by the legislator. They are currently implemented on the basis of the provisions of the aforementioned Act of 20 February 2015 on Supporting Rural Development with the participation of the European Agricultural Fund for Rural Development under the Rural Development Programme 2014–2020. It is worth noting that the start date of the new Common Agricultural Policy (CAP) was postponed to 1 January 2023 due to protracted negotiations and the need to continue payments to farmers and other beneficiaries. Under the transitional regulation for 2021 and 2022,⁴⁴ the provisions in force in 2014–2020 for the CAP have been extended and new elements have been included, in particular regarding the Green Deal and enabling the transition to new strategic plans for agricultural policy.

It is the legislator's intention that the instruments concerning trade in agricultural real estate, which were included in the UKUR, should create conditions facilitating the implementation and application of instruments supporting agriculture. According to P. Popardowski, the noted aim should be understood to mean that the solutions of the UKUR, especially concerning the prerequisites for purchasing agricultural real estate, should allow for maintaining coherence with the requirements adopted for the implementation and application of agricultural support instruments.⁴⁵

However, J. Bieluk is right when he emphasises that the Act does not create *per se* the conditions determining the obtaining of support, as this is not the subject of its provisions.⁴⁶ A similar view in this respect was formulated by T. Czech. The author stressed that this provision is inadequately constructed,

⁴³ Act of 20 February 2015 on Supporting Rural Development with the participation of the European Agricultural Fund for Rural Development under the Rural Development Programme for 2014–2020, consolidated text: Journal of Laws 2021 item 182.

⁴⁴ OJ L 437, 28.12.2020, pp. 1–29.

⁴⁵ P. Popardowski, in: *Prawo rolne. Obrót nieruchomościami rolnymi...*, p. 100.

⁴⁶ J. Bieluk, *Ustawa o kształtowaniu ustroju rolnego. Komentarz*, Warszawa 2019 [Legalis database], Article 1, line no. 15.

since the implementation and application of agricultural support instruments cannot be an aim in itself, but should aim at a certain result.⁴⁷

2.2.6. Pursuing an active agricultural policy

Article 1 point 6 of the UKUR declares an active pursuit of agricultural policy. This objective should be reduced to a normative description of forms of activity of the National Support Centre for Agriculture in trading in agricultural real property.

There is a well-known opinion that the activity exposed in Article 1 (6) of the UKUR in the realisation of fundamental objectives of the agricultural policy should be perceived at two levels:

- 1) in formally granting to the National Support Centre for Agriculture (KOWR) extensive competencies that allow it to actively participate in and control agricultural real estate trade;
- 2) in the expectation that KOWR should actively use the competencies granted to it in order to ensure the proper implementation of the basic assumptions of national agricultural policy.⁴⁸

There is no doubt that the actions of the National Agricultural Fund aimed at implementing the state policy in the scope of control of agricultural land trade cannot remain in contradiction with the principles of EU law, including the freedom of capital flow. However, the European Parliament accepts the position of the German Constitutional Tribunal expressed in the ruling of 12 January 1967⁴⁹ that trade in agricultural land need not be as free as trade in any other form of capital, in particular, because of the impossibility of increasing the area of land. However, it is necessary to comply with basic principles such as proportionality, non-discrimination and the protection of the public interest. This legal framework should determine the active policy of the state in the discussed scope and constitute a guideline for achieving the objectives of the UKUR.⁵⁰

The above analysis of the objectives of shaping the agricultural system declared by the legislator leads to the conclusion that the UKUR does not regulate the shaping of the agricultural system in a comprehensive manner, but concentrates on introducing mechanisms to trade in agricultural land which are to have a positive

⁴⁷ T. Czech, *Kształtowanie ustroju rolnego...*, p. 21.

⁴⁸ P. Popardowski, in: *Prawo rolne. Obrót nieruchomościami rolnymi...*, p. 100.

⁴⁹ 1 ByR 169/63, BVerfGE 21, 73–87.

⁵⁰ D. Łobos-Kotowska, M. Stańko, *Ustawa o kształtowaniu...*, p. 30.

impact on the agricultural system. In order to describe the role of the UKUR in influencing the agrarian structure of the country, it is important to emphasise that this Act concentrates on the issue of regulating trade in agricultural real property. However, what remains outside the sphere of normative interest is an equally important matter of involving instruments encouraging farmers to take action to improve the area structure of farms. Agrarian reconstruction, as P. Popardowski points out, cannot be perceived only through the prism of measures limiting trade in agricultural real estate (area standards, requirements concerning agricultural qualifications, the requirement of administrative consent, etc.). The author rightly points out that for a real improvement of structural conditions, it is necessary to apply a complex approach. Therefore, apart from introducing rationing solutions, it is justified to apply legal instruments encouraging farmers to carry out structural changes in their agricultural holdings. Only in this way it is possible to initiate processes allowing for abandoning the hitherto disadvantageous structural arrangement of agricultural production. The indicated function should be performed by tax preferences related to investment activities in agricultural holdings in order to improve their production capacity or financing mechanisms, the granting of which to a farmer will depend on taking actions towards the structural reconstruction of agricultural holdings.⁵¹

3. The Act on the Formation of the Agricultural System as an instrument to achieve a political objective

According to A. Lichorowicz, striving to fulfil a political goal which was to create a system preventing socially unfavourable effects of uncontrolled purchase of land by foreigners, including speculation, as well as haste in the last stage of legislative works resulted in the Act containing regulations which do not fully correspond to its title and goals declared in its Article 1.⁵² The title of the Act suggests that it specifies comprehensively all aspects related to shaping the agricultural system, while the aim of the regulation originally declared in Article 1 of the UKUR is the improvement of the area structure of agricultural holdings, counteracting excessive concentration of agricultural real estate and ensuring that agricultural activity in

⁵¹ P. Popardowski, in: *Prawo rolne. Obrót nieruchomościami rolnymi...*, p. 55.

⁵² More on this topic: A. Lichorowicz, *Instrumenty oddziaływania na strukturę gruntową Polski w ustawie z dnia 11 kwietnia 2003 r. o kształtowaniu ustroju rolnego*, *Kwartalnik Prawa Prywatnego* 2004, vol. 13, no. 2, pp. 387–388.

agricultural holdings is conducted by persons with appropriate qualifications. This list, as indicated above, has been additionally extended on the basis of the amendment to the Act of 2019. Pursuant to subsequent points of Article 1 of the UKUR added by virtue of this amendment, this Act defines the principles of the agricultural system of the state also as supporting the development of rural areas, the implementation and application of agricultural support instruments, as well as active agricultural policy of the state.

The juxtaposition of the content of the preamble of the UKUR and Article 1 of the UKUR with the political and legal environment in which the Act functions, allows a conclusion to be drawn that there was a dissonance between the actual and revealed intentions of the legislator. T. Kurowska is right in pointing out that the drafting of the UKUR was motivated by “a political goal and not by concern for the proper shape of ownership and structural transformations in agriculture in market economy conditions, where a family farm, among other production units in agriculture, would be subject to particular care and protection of the state.”⁵³ What is more, the aim of passing the act, which in fact came down to ensuring control over the ownership turnover of agricultural real estates, determined the way the term family holding is defined in the act.⁵⁴

Paradoxically, the noted contradiction between real and revealed intentions of the legislator is also indicated by the legislator themselves. A spectacular example here is a fragment of the justification of the Act that reads:

The aim of the proposed Act is to strengthen the protection of agricultural land in Poland against its speculative purchase by domestic and foreign persons who do not guarantee that the acquired land will be used for agricultural purposes in accordance with the social interest. The legal regulations in force in this matter do not in any way counteract the speculative purchase of agricultural real estate and do not guarantee that the real estate purchased will be used for agricultural purposes.⁵⁵

A similar conclusion results from the analysis of an opinion of the Legislative Council, which indicates that

⁵³ T. Kurowska, *Ochrona gospodarstwa rodzinnego – uwagi de lege lata i de lege ferenda*, *Studia Iuridica Agraria* 2010, vol. 8, p. 21.

⁵⁴ K. Stefańska, *Pojęcie gospodarstwa rodzinnego w ustawie o kształtowaniu ustroju rolnego*, *Studia Iuridica Agraria* 2005, vol. 5, pp. 191 ff. See also: K. Stefańska, *Przesłanki prawnego różnicowania pojęcia gospodarstwa rolnego*, in: *Z zagadnień prawa rolnego, cywilnego i samorządu terytorialnego. Księga jubileuszowa profesora Stanisława Prutisa*, eds. J. Bieluk, A. Doliwa, A. Malarewicz-Jakubów, T. Mróz, Białystok 2012, p. 293.

⁵⁵ Justification of the Bill on the Suspension of the Sale of Properties...

The justification of the bill – in the part concerning the indication of the public interest in favour of introduced changes – is inconsistent to some extent. On the one hand, the legislator refers to important values, the protection of which is the unquestionable obligation of public authorities in the Republic of Poland – food security of the state, the need to ensure the use of agricultural land for agricultural purposes, maintaining the existing area of agricultural land and ensuring its proper use, not deteriorating the productive properties of soil, and restoring the lost value of agricultural land. On the other hand, the justification of the bill emphasises that the 12-year protection period for the purchase of Polish agricultural land by foreigners enshrined in the Treaty of Accession of Poland to the EU ends on 1 May 2016. In the opinion of the Legislative Council, it is not clear what type of threats to the public interest arise from the end of the abovementioned protection period and how these threats may be eliminated by the bill under review.⁵⁶

Polemicising with this standpoint, M. Korzycka recognises the regulation analysed here as comprehensive and appropriate, and even as “pro-national and pro-state” in the scope especially of its aims and importance in the Polish legal order.⁵⁷ A position of compromise is presented by M. Zubik, who on the one hand emphasises the existence of public interest in regulating by the legislator the issue of trading in agricultural land, but on the other hand points out that “certainly, the recognition of a farm as a family farm does not depend on the citizenship of its owner.”⁵⁸ Referring to the question of citizenship, the author warns the legislator against the discriminatory character of differentiation criteria, postulating also that these criteria should meet the “requirement of rationality, adequacy and proper balancing of limitations resulting from the protected constitutional goods.”⁵⁹

⁵⁶ M. Kaliński, A. Wyrozumska, K. Wójtowicz, M. Wiącek, M. Bojarski, D. Kijowski, *Opinia Rady Legislacyjnej z 26 lutego 2016 r. o projekcie ustawy o wstrzymaniu sprzedaży nieruchomości Zasobu Własności Rolnej Skarbu Państwa oraz o zmianie niektórych ustaw*, Rada Legislacyjna przy Prezesie Rady Ministrów, RL-0302-5/16, point II, subpoint 6.

⁵⁷ M. Korzycka, *Analiza prawna przepisów ustawy o wstrzymaniu sprzedaży nieruchomości Zasobu Własności Rolnej Skarbu Państwa oraz o zmianie niektórych ustaw zwana dalej ustawą* (Senat print 124) (*Opinions and Expert Opinions OE-248*), Kancelaria Senatu, Biuro Analiz i Dokumentacji, April 2016, p. 5.

⁵⁸ M. Zubik, *Gospodarstwo rodzinne – niedoceniona szansa współkształtowania konstytucyjnych podstaw ustroju rolnego poprzez sądownictwo konstytucyjne*, in: *Prawne mechanizmy wspierania i ochrony rolnictwa rodzinnego w Polsce i innych państwach Unii Europejskiej*, ed. P. Litwiniuk, Warszawa 2015, p. 56.

⁵⁹ *Ibidem*.

Conclusion

There is no doubt that the Act on Shaping the Agricultural System is one of the normative elements co-creating the structural conditions for agricultural activity in Poland.

The preamble to the UKUR specifies the objectives that the legislator intends the regulation to pursue, in particular:

- strengthening the protection and development of family farms which are the basis of the agricultural system of the Republic of Poland,
- ensuring proper management of agricultural land in the Republic of Poland,
- ensuring food security for citizens,
- promoting diversified agriculture in line with environmental requirements and fostering rural development.

The formulated catalogue of objectives emphasises the constitutional principle of a family farm constituting the basis of the agricultural system (Article 23 of the Constitution of the Republic of Poland) and refers to the current challenges of the Common Agricultural Policy of the European Union.

Article 1 of the UKUR specifies *expressis verbis* the objectives to be achieved with the use of the instruments provided for in the Act. The objectives of the UKUR which were declared by the legislator include: 1) improvement of the area structure of agricultural holdings; 2) counteracting excessive concentration of agricultural real estate; 3) ensuring that agricultural activity is carried out on family holdings by persons with appropriate qualifications; 4) supporting the development of rural areas; 5) implementing and applying agricultural support instruments; 6) active state policy.

In the context of the considerations presented here, one should not lose sight of the political and legal context in which the regulation was introduced. Neither in the preamble nor in Article 1 of the Act on Agricultural Real Estate, was one of the primary and actual goals of the legislator explicitly expressed. The provisions of the UKUR aim at preventing the purchase of agricultural real estate for purposes not related to agricultural activity (investment, speculation, etc.). However, the above-mentioned aim may be derived from the preamble which mentions the appropriate management of agricultural land. It is reflected in numerous provisions of the Act.⁶⁰ In order to fulfil this objective, the legislator, in the text of Article 2b § 1 of the UKUR, imposed on the purchaser of agricultural real estate the obligation to run the agricultural holding which included the real estate for at least 5 years.

⁶⁰ See, in particular, Articles 2a (1) and 9 (3) of the UKUR.

Moreover, the socio-political analysis indicates that the provisions of the Act on Shaping the Agricultural System are to hinder foreigners from purchasing agricultural real estate in Poland, creating a system of preferences for persons who have already established and run family farms in Poland. This is done, among others, by the criterion of *domicile* specified in Article 6 section 1 of the Act on Shaping the Agricultural System.⁶¹

The presented aim induces the legislator to create – in the Act on Shaping the Agricultural System – a closed, complete normative system of rationing the trade in agricultural real estate. It should be noted that at the same time, it causes many dysfunctions in the application of the Act in practice, especially in confrontation with the principle of the autonomy of will in civil law transactions and the need to implement other public objectives.⁶²

As emphasised by P. Popardowski, the comparison of tasks specified in the preamble and Article 1 of the UKUR with legal instruments included in the Act indicates that this legal Act concentrates mainly on issues related to the protection of Polish agricultural land against excessive concentration.⁶³ This leads to the conclusion that the legal mechanisms included in the Act only partly contribute to the proper shaping of the agricultural system.

The objectives declared by the legislator do not reflect all the problematic issues related to the shaping of the agricultural system. As a consequence, the title of the Act misleadingly suggests that through the solutions included in this act, the agricultural system is shaped in a comprehensive way.

Moreover, the tasks expressed in Article 1 of the UKUR are not consistent with the conceptual assumptions expressed by the legislator in the preamble, which are accepted as a justification for the undertaken legislative activity. The juxtaposition of the content of the preamble to the UKUR and Article 1 of the UKUR with the political and legal environment in which the Act functions allows one to conclude that there is a dissonance between the actual and revealed intentions of the legislator.

At the same time, defining the objectives of the Act is not an accidental procedure. Through this legislative procedure, the legislator sets the directions for the interpretation of individual provisions. It is through interpretation that the basic assumptions of the legislator should be achieved. However, this procedure is particularly risky where a given legal regulation leaves a considerable margin

⁶¹ T. Czech, *Kształtowanie ustroju rolnego...*, pp. 21–22.

⁶² Ibidem, p. 21.

⁶³ P. Popardowski, in: *Prawo rolne. Obrót nieruchomościami rolnymi...*, p. 9.

of decision-making to its executors, in this case the National Support Centre for Agriculture.⁶⁴

Undoubtedly, the scope in which the content of the preamble and Article 1 of UKUR, as well as the values stemming from these regulations, are taken into account in the process of interpreting the law will be determined by the findings of the bodies applying the law. It is aptly pointed out in the doctrine that it is not insignificant that the legislator formulates the purpose of the Act directly in its provisions, because, in the case of interpretation doubts, this procedure helps to correctly introduce the interpretation of the ambiguous provision in terms of purpose.⁶⁵ In this context, it should be indicated, as it is done by J. Bieluk, that it is extremely important how the objectives of the Act will be understood by decision-makers – in this case, by KOWR because the application of the instruments included in the Act (pre-emptive right, purchase right, granting consent to purchase real property and the waiver of obligations related to land acquisition) depends on this body. It should be remembered that the use of the right of pre-emption and the right of purchase is not subject to any control under any procedure. The decision on exercising the pre-emptive right is not a decision from the point of view of administrative law, it is a management right of the General Director of the KOWR (directors of field offices acting on the basis of his/her authorisation) subject to evaluation only within the internal structures of the KOWR.⁶⁶

Therefore, K. Marciniuk is right to note, against the background of the analysed here problem of discrepancy between actual goals and those declared by the legislator of the UKUR, that

instead of creating instruments to stimulate the transformation of the area structure of Polish agriculture, this Act concentrates *de facto* on the maintenance of the *status quo* and has at most a protective function, protecting individual farmers from competition in the acquisition of agricultural real estate by capital investors from outside the agricultural sector. It seems that this undoubtedly advantageous function of the Act does not exhaust the needs which Polish agriculture faces in the scope of area structure transformation towards the structures permanently increasing the production efficiency and at the same time profitability of Polish agriculture.⁶⁷

⁶⁴ D. Łobos-Kotowska, M. Stańko, *Ustawa o kształtowaniu...*, p. 23.

⁶⁵ P. Czechowski, P. Wieczorkiewicz, *Problemy ingerencji prawnej w swobodę obrotu nieruchomościami rolnymi w ustawie o kształtowaniu ustroju rolnego i jej wpływ na interpretację ustawodawstwa krajowego*, *Studia Iuridica Agraria* 2005, vol. 5, p. 25.

⁶⁶ J. Bieluk, *Ustawa o kształtowaniu ustroju rolnego...*, Article 1, line no. 9.

⁶⁷ K. Marciniuk, *Prawne instrumenty ingerencji władzy publicznej w obrót nieruchomościami rolnymi jako środki kształtowania ustroju rolnego*, Białystok 2019, p. 393.

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