

IZABELA LIPIŃSKA

## THE CONTRACT OF FARM HOLIDAY

*From Department of Food Management Economics  
of The August Cieszkowski Agricultural University of Poznań*

ABSTRACT. A farmer may enable tourists to spend holidays within his agri-tourism farm on the base of a contract of country holidays. Its rules and conditions are defined in civil code.

**Key words:** agri-tourism farm, contract of country holidays, village tourism, lease contract, sale contract

For a few years it has been a very popular way of spending free time, weekends and holidays in the countryside. For some people native activities become more and more attractive, even equal to exotic trips. It is typical for this kind of vacation that holiday makers are not accommodated in hotels, or motels. Instead they stay within the farmer's property, quite often in his house. Trying to find its legal nature it is obvious that according to art. 55<sup>3</sup> of the Civil Code a farm is run by a farmer and his inmates. The valid legal provisions do not determinate running such a farm by other subjects as legal entities (i. ex. limited companies or co-operatives). Also the subjects of the civil law without legal personality are included. What is important – the area where the farm is located must follow certain environmental conditions. Among them some natural, ecological, landscape, social and ethnic values are very important. The holiday maker must be convinced to spend some time in the countryside.

Every single visit in the farm is related to rise the new legal relation called contract. Its parties may be both a farmer who is the agri-tourist farm possessor, as well as tour operator<sup>1</sup>. Therefore arises the question: what kind of contract should be signed by the parties? What shall be included as its *essentialia negotii*?

Adequately, the aim of this article is to point out the legal nature of the contract of the holiday in the farm. It is important to define the domain of legal measures what influence on its creation. Besides the analyze lets estimate them in the relation of exercise the performance. Because not many farm holders sign the contracts by agents or

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<sup>1</sup>Tour operator means the person who, other than occasionally, organizes packages and sells or offers them for sale, whether directly or through a retailer.

tour operators – this paper considers only the coming relation between a single farmer and a “consumer” (holiday maker).

The structure of the paper follows the mentioned aim. Successively, the considerations refer to the legal nature of the farm’s holiday contract, parties’ obligations (duties) and rights and the evaluation of legal situation of the farmer – organizer of the holidays.

The regulation in the subject of agri- and farm tourism is very wide and distracted. There is no single act that covers its framework in a comprehensive way. The general provisions of the contract of the farm’s holiday are defined in the act of 29 August 1997 on the regulation of tourist services (**Ustawa...** 1997) (further as “Tourist regulation”) and the Civil Code (**Ustawa...** 1964). It must be mentioned that the tourism activity should not be treated as the commercial one. In this case the legal provisions defined in the act of 2 July 2004 on the regulation of the business activity’s freedom (**Ustawa...** 2004), are not valid. Therefore it is excluded from the registration. According to art. 3 of mentioned regulation its provision cannot be fulfill in the case of productive activities within the agricultural such as plant cultivation, animal breeding, horticulture, gardening, forestry, fishing and rental of rooms within a farm, meals sell and offering others services that are familiar to agri-tourism.

The mentioned regulation of tourist services creates and influences on the basic provisions, like definitions of package, tourist, hotels’ services. The last involved the certain minimal conditions in equipments, hygienic and fire-fighting standards.

The subject of the contract in the matter of farm holiday is mainly to assure a proper stay within the farm for a tourist. It covers such elements as accommodation, meals and eventually additional recreations (i. ex. horse riding, fishing, canoeing, using the rowing boat, etc.).

There are two parties of the contract – a farmer who is the possessor of a farm and a tourist. According to art. 3 point 9 of “Tourist regulation” a tourist must be understand as a natural person, who travels to another city out of the place where he lives. The trip cannot exceed 12 months and its aim cannot be connected with work. The tourist has to stay there for at least one night. Whereas a farmer must be a major person, who lives and runs a farm within the Polish borders. He has to run agricultural activities in the agricultural farm he has, on his own account. He may also be a partner in the producers group (art. No 6 point 1 of the act of 20 December 1990 on the regulation of social insurance in agriculture, **Ustawa...** 1998). The farmers who have passed on the lands to forestry are included, too.

The farmer’s activities – according to the contract – concern rendering accommodation which follows the conditions mentioned in the Regulation of 19 August 2004 concerning hotels and other places where accommodation services are held (**Rozporządzenie...** 2006). Besides the farmer provides meals and specific local attractions. The tourist is obliged to pay a certain fee.

The investigated contract from its legal nature is payable. The gratification as a basic element of the agreement is one of most important among its *essentialia negoti*. The parties are free in determination of the fee (i.e. for elements whole stay, according to the length of stay and the quality and number of special services).

To sign the contract, parties do not have to follow any of the special legal forms (i.e. the form of the notary). It may be concluded in the oral form. But to ensure the obligations it is more habitual to conclude it in the written form.

Continuing the dissertation it should be mentioned that the legal nature of the contract is pretty intricate. It belongs to group of innominate and mixed contracts. An in-

nominate contract is a contract arising from the autonomous will of the parties (everything that is not prohibited is permissible), which, because of the originality of solutions provided for in its wording, cannot be assigned to regulated types of contracts, while the mixed contract includes a portion of the material provisions of some nominate contract (or contracts) and furthermore, new and original elements.

In the case of contract of farm holiday the general norms are applied. Besides some of them may apply by *analogiae legis* (Radwański and Panowicz-Lipska 2004). It happens only in the situation when similarity occurs. The contract consists also of some elements that are typical for a nominate contract (Nesterowicz 2003). Among them must be named a contract of the tenancy, “accommodation”, purchase, storage, and lending.

It is important to find the connections between the contract of farm holiday with some nominated ones. Specific regulation is covered in the Civil Code. The subject of the contract is related to assure the holiday-maker the accommodation, so it implies the use of a short-term tenancy (lease) contract. According to art. 659 § 1 of CC by the contract of (tenancy) lease, the lessor assumes the obligation to give the lessee a thing for use for a specified or unspecified time, and the lessee assumes the obligation to pay the lessor the agreed rent. In this case a certain thing can be a room or a house within the agri-tourist farm, where a holiday maker stays fortnight. The lessor (a farmer) shall release the lessee (holiday maker) the thing in a condition suitable for the use agreed upon and maintain it in such condition throughout the period of the lease. The tourist shall use the room leased in the manner specified in the contract and in the “house rules”. This regulation is in force if it was introduced to the holiday maker and he agreed. Instead of the “house rules” some customary law or the principles of community life may be established. For the room’s lease the holiday maker has to pay a farmer the agreed rent.

The use of farmer’s property can be based on keeping some goods (i.e. bags, cars, valuables). In this case the storage rules shall be followed. According to art. 835 of CC under the contract of storage, the keeper shall assume the obligation to preserve the thing in a non-deteriorated condition.

Quite often the holiday maker likes to have some meals within a farm which are prepared by the farmer’s family. In this case the provisions of sell contract will be used (Cybula 2006). On the base of art. 535 of the Civil Code under the contract of sale, the seller shall assume the obligation to transfer to the buyer the ownership of a thing and to release the thing to him, while the buyer shall assume the obligation to collect the thing and to pay the seller the price. This is a typical consensual contract, in which the parties’ duties arise in the moment of signing. The farmer has to remember that in the food process some health rules have to be passed. Non-fulfillment of those duties causes criminal liability. They are concerned as petty offences (Nesterowicz 2003). In preparing, cooking and consuming the food the rules covered in the Act of 11 May 2001 on the regulation on health conditions for food and human feeds shall be passed (Ustawa... 2001).

The lending for use contract is the last one which provisions may be a part of the farm holiday. Its legal nature is constructed in the Civil Code. By a contract of lending for use, the lender shall assume the obligations to allow the borrower, for a specified or unspecified time, to use gratuitously a thing given to him for that purpose (art. 710 of CC). The farmer who is the owner of i.e. a bicycle, canoe, etc. in the frame of main contract can let the holiday maker use those items. This kind of contract is a real one.

It means that it gives the wanted result after the release of the thing to the borrower. The lending contract does not provide the gratification, but farmer may include it in the general contract. Farmer's services are based on bearing the lending, so it makes it more similar to the tenancy contract. But the essential element which varies both is the fact that the tenancy contract is always followed by the gratification, and the contract of lending for use is not. If the contract does not specify the way of use, the holiday maker will use the thing leased in a manner corresponding to the nature and designation of the thing. Without the consent of the lessor, the lessee cannot make in the thing leased changes at variance with the contract or with the designation of the thing. The holiday maker who uses the thing in a manner inconsistent with the contract or with the designation of the thing and in spite of a warning does not cease to use it in such manner, or if he neglects the thing so much that it is exposed to loss or damage assumes the responsibility for it. Likewise, when he rides a bicycle, he is responsible for its loss and damage if he uses the thing (a bike) in a manner inconsistent with the contract or with the designation of the thing. Also he takes the responsibility when without the authorization passes a bike to a third party and it causes its loss or damage.

In the recapitulation it must be said that the contract of farm holiday should cover such measures as:

- accommodation – specification of room standard, information about its type (i.e. site of the building, size, equipment, etc.),
- periods of stay,
- the meal plan and kinds of meals,
- the possibilities to use other space than a room – the farmer should indicate the space to use and the space restricted (with or without permission); they have to be familiar with the area to be used together with a farmer and his family,
- possibilities of used some mobilities,
- the payment schedule and method of payment.

The organizer – the owner of the farm will provide the holiday maker, before the contract is concluded, with both general information on elements that have to be included in the contract, as well as protective measures. Especially it considers the situation of the farmer in the case the consumer will not show up. Simply the consumer is the one who fails to arrive. Quite often the contracts are signed long before the agreed date of holidays. It allows the farmer to get the advanced payment. With regard to the damage resulting for the party from the failure to perform of the contract, according to the art. 394 of CC the given advanced payment effects that second party is free to withdraw before departure from a contract. He has a right to keep the advanced payment and if it was given by him, he may get double. If the liability is performed the payment is added to the final price. It may happen that the liability cannot be performed. It results in the return payment. The same happens for reasons of *force majeure*, i.e. unusual and unforeseeable circumstances beyond the control of the party by whom it is pleaded, the consequences of which could not have been avoided even if all due care was exercised.

In certain situation it is possible to arrange the obligation of deposit of cash. It claims the farmers default in the case of damage of the house or the equipment. The deposit is returned on the day of the departure. Although it is necessary to inform the holiday maker about the deposit before the contract is concluded.

In the recapitulation it must be said that there is not a model contract, that can be signed by the farmer. But the nature of it lets make the simple legal arrangements. However, if the entity decides to conclude a holiday contract on the base of any nomi-

nate contracts it implies application of its principles. It considers the subject of the contract, the parties' duties and the results of the failure to perform or improper performance of the services involved in the contract.

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## UMOWA O W CZASY W GOSPODARSTWIE AGROTURYSTYCZNYM

### Streszczenie

Rolnik będący posiadaczem gospodarstwa agroturystycznego, udostępniając je wczasowiczom, zawiera z nimi określoną umowę. Jest to najczęściej „umowa o wczasy”, której treść ustalają strony na podstawie przepisów Kodeksu cywilnego. Zawiera ona elementy innych umów w zakresie kształtowania praw oraz obowiązków stron, czy też odpowiedzialności za wykonanie i niewłaściwe wykonanie umowy. Wśród nich należy wymienić sprzedaż, użyczenie, najem i przechowanie. Omawiana konstrukcja prawna umożliwia ochronę rolnika – organizatora wypożyczalni.