

PERPETUAL USUFRUCT OF AGRICULTURAL LANDS – SELECTED LEGAL AND FINANCIAL ISSUES

Aneta Suchoń

Adam Mickiewicz University in Poznań

Abstract. The article makes an attempt to determine whether the legal regulations provide a perpetual lessee with, first of all, stable conditions to hold agricultural lands and to run a business activity on these lands and, second of all, whether the regulations make it easier for perpetual lessees to acquire the right to own the lands they possess. The first part of the article concentrates on the legal nature of perpetual usufruct as well as the rights and financial obligations of a perpetual lessee. Then, the paper focuses on the transformation of perpetual usufruct into the right of ownership and the expiry of perpetual usufruct. Next, the article analyses the issue of a perpetual lessee as an agricultural producer. At the end, the Author states that perpetual lessee possesses a wide range of rights and can freely run an agricultural activity on agricultural lands. The legislator has acknowledged perpetual usufruct, along with the most popular forms of holding lands such as ownership and lease, to be a stable element of rural relations. Thus, a perpetual lessee can be granted the European funds, agricultural tax reliefs and insurance in KRUS.

Key words: perpetual usufruct, agricultural lands, agricultural activity, EU funds

INTRODUCTION

For each agricultural producer it is essential to possess lands in an autonomous and stable way in order to ensure uninterrupted course of an agricultural activity. It is guaranteed by the ownership title to lands. Apart from ownership there are, however, various other legal forms of holding lands, for instance: lease, usufruct, perpetual usufruct. Perpetual usufruct is a form of long-term use of land, alternative to the sale in case of disposal of real estate of the State Treasury and units of the local government [Gniewek 2000].

That institution has been functioning in the Polish legal system since the Act of 14 July 1961 on Land Management in Towns and Housing Districts [Ustawa... 1969]¹ came into force. For many years perpetual usufruct served mainly building purposes. Nowadays perpetual usufruct is no longer limited to “built-up lands” or “lands allocated to building development”. Thus, it is possible to lease out for perpetual usufruct any lands, including agricultural lands, irrespective of their intended use [Gniewek 2000].

The main acts on perpetual usufruct are Polish Civil Code [Ustawa... 1964] and the Act of 21 August 1997 on Real Estate Management [Ustawa... 2014]. Perpetual usufruct in terms of an agricultural activity run on agricultural lands has also been regulated in the Act of 15 September 1984 on Agricultural Tax [Ustawa... 2006], Act of 19 October 1991 on Management of Agricultural Real Estate owned by the State Treasury [Ustawa... 2012 a], Act of 11 April 2003 on Formation of Agricultural System [Ustawa... 2012 b], and others.

In turn, problems connected with the transformation of perpetual usufruct right into property right to landed property were discussed in the Act of 29 July 2005 on the Transformation of Perpetual Usufruct Right into Property Right to Real Estate [Ustawa... 2012 c]. There are many publications about perpetual usufruct. They do not, however, contain the issues referring to perpetual usufruct of lands in the context of an agricultural activity run on these lands.

This article makes an attempt to determine whether or not the regulations provide a perpetual lessee with, first of all, stable conditions to hold agricultural lands and run an agricultural activity on these lands and, second of all, whether the regulations make it easier for the perpetual lessees to acquire the right to own the lands they possess.

LEGAL NATURE OF PERPETUAL USUFRUCT AND THE RIGHTS OF PERPETUAL LESSEE

The objects of perpetual usufruct may only be land real estate: 1) owned by the State Treasury, located within the administrative borders of towns and land located outside these borders, but included in the land development plan of a town and implemented to accomplish tasks of its economy (Article 232 § 1 of the Civil Code); 2) as well as land owned by units of local government or their unions (Article 232 § 1 of the Civil Code); 3) moreover, in the cases stipulated in the specific regulations the object of perpetual usufruct may also be other land owned by the State Treasury, units of local government or their unions (Article 232 § 2 of the Civil Code) [Ustawa... 1964].

In reference books concerning perpetual usufruct and in respective judicial decisions² it is assumed that the right of perpetual usufruct is an intermediate right between

¹ The Act replaced temporary ownership with perpetual usufruct. As stated by Truskiewicz [2006] “perpetual usufruct was introduced to the Polish legal system in the period where the dominant form of ownership – due to political reasons – was state ownership, subject to special protection. Replacing the above-mentioned temporary ownership and other rights of a similar nature with perpetual usufruct was determined mainly by the fear of further privatization of state property and competitive nature of temporary ownership (Article 41 UGT)”.

² In the decision of 17 January 1974, III CRN 316/73 (OSNCP 1974, book 11, item 197), the Supreme Court ruled that perpetual usufruct was modeled as an institution intermediate between

ownership and limited rights in property. The legislator emphasized this, reserving in the Civil Code a separate place for perpetual usufruct, after the right to property and before limited rights in property. Thus, it needs to be assumed that perpetual usufruct is closer to the ownership right than to limited rights in property [Gniewek 1999, Kodeks... 2000].

Perpetual lessees, similarly as owners, have the right to use real estate, make use of it and dispose of the vested rights. The difference between the right of perpetual usufruct and the ownership right stems from the following characteristics. Firstly, the perpetual usufruct right is limited in time. A perpetual lessee can use perpetually leased land in a limited way and is obliged to manage that land in a specific time, under pain of loss of the vested right. Additionally, the perpetual usufruct right is connected with the obligation to pay the so-called first fee and next annual fees the amounts of which may be indexed [Suchoń 2009 b]. According to the Act on Real Estate Management [Ustawa... 2014], the sale of real estate or perpetual lease of landed property requires the conclusion of a contract in the form of a notarial deed. An additional crucial element is an entry to the Land and Mortgage Register. This entry is a necessary element for the creation of perpetual usufruct and it is constitutive in character [Szachulowicz et al. 2002].

Acquiring the right of perpetual usufruct under an agreement made with the National Treasury or a local government unit requires complying with a strict procedure. Under the Act on Real Estate Management, the lands, as a rule, are leased out for perpetual usufruct in a tender procedure.

The tender procedure is executed in the form of: 1) oral open tender, 2) oral limited tender, 3) written open tender, 4) written limited tender. The objective of an oral tender is to receive the highest price, while that of a written tender is to select the most advantageous offer.

A perpetual lessee uses the land according to the terms and conditions of a contract, within the limits specified in an Act and the principles of community coexistence. Thus, the general purpose of land and, consequently, specified in a contract manner of using the land is of great importance. In order to guarantee the continuity of running a business activity it is also important to be allowed to transfer the perpetually leased lands to entities taking over the agricultural lands in the form of a sale agreement, exchange or donation agreement or a different agreement obliging to transfer the right of perpetual usufruct. That is of particular significance for a perpetual lessee who intends to pass the agricultural lands in order to take up early retirement from the Farmers' Social Security Fund (KRUS) or its supplementary part. It is also possible to lease out the lands. Moreover, the right of perpetual usufruct as the property right not closely connected with its holder is included into inheritance (Article 922 of Civil Code). Therefore, it is inherited under a will or statutory provisions. It goes without saying that the right of a perpetual lessee to exercise his rights include the possibility to encumber this right with limited property rights, for example, mortgage. Taking out a mortgage is often necessary to be granted a loan for agricultural activity or purchase of agricultural equipment.

the legal category of ownership and the category of the so-called limited rights *in rem*. Thus, in cases not regulated in Articles 232-243 of the Polish Civil Code and in the contract on perpetual lease of state land in a situation of problems with interpretation it is recommended, first of all, to apply by analogy regulations contained in chapter II title I of book II of the Civil Code, concerning contents and execution of ownership, i.e. for example also Article 145 of the Civil Code.

The applicable regulations do not directly lay down the issue of acquiring the right of perpetual usufruct by acquisitive prescription. In reference books and relevant judicial decisions³ it is acceptable to acquire the right of perpetual usufruct by acquisitive prescription against the previous perpetual lessee [Truszkiewicz 2006].

An essential element of running an agricultural activity is a stable possession for a long time. Generally the time limit for perpetual usufruct is ninety nine years (Article 236 § 1 sentence 1 of the Civil Code). The legislator admits the possibility of a contractual establishment of a shorter time limit, of at least forty years, "in exceptional cases, when the economic objective of perpetual usufruct does not require the lease of land for ninety nine years" (Article 236 § 1 sentence 2 of the Civil Code). Within the last five years before the expiry of the time limit stipulated in the contract, a perpetual lessee may demand its extension for a further period, from forty to ninety nine years. However, the perpetual lessee may earlier present such a demand if the period of depreciation of outlays intended on the used land is much longer than the time remaining to the expiry of the time limit stipulated in the contract. A refusal to extend the time limit for perpetual usufruct is admissible only due to important social interest.

A perpetual lessee may make use of land "with the exclusion of other persons" (Article 233 Civil Code). This expresses the absolute character of the perpetual usufruct right. The perpetual lessee is entitled to respective petitory claims. Irrespective of this, a perpetual lessee may use the possessory claim [Gniewek 2000]. Undoubtedly, running an agricultural activity requires protection of the right of perpetual usufruct.

Vindicative claim is applied to protect the perpetual usufruct right in accordance with Article 222 § 1 of the Civil Code. Thus, a perpetual lessee may demand from a person who actually holds the real estate perpetually leased to him, to have the real estate released to him (unless this person has the right to hold the real estate effective in relation to the perpetual lessee). Vindicative claim of a perpetual lessee is also effective against the owner.

In turn, against the person who infringes perpetual usufruct "in a manner other than by the actual deprivation of holding of the thing", the perpetual lessee is entitled to a claim "to restore the former state in accordance with the law" and "cease infringement of right" (Article 222 § 2 of the Civil Code). A negatory claim is, thus, applied when an unauthorized person e.g. trespasses a perpetually leased real estate; drives their cattle to this real estate, fishes in another person's lake; builds something on another person's land; takes water from a well located on another person's land or when a spray shop

³ For example, in the decision of 25 March 2004 the Supreme Court (II CK 105/03) ruled that the premise for acquisitive prescription of perpetual usufruct is owner-like possession of a real estate in the scope of such a right for a specific period of time (art. 172 Civil Code). Owner-like possession of a real estate in this case consists in the actual holding of the real estate as a perpetual lessee (Article 336 of the Civil Code). If the real estate is in the owner-like possession of several persons, the character of possession is determined by their conviction on the scope of the executed right. It is inappropriate to claim that for the acceptance of the continuity of possession in the scope of holding of withdrawing co-possessors a contract on the transfer of possession would be required if Article 348 of the Civil Code considers the issue of a property as the basic form of possession transfer. Thus it may not be assumed that as a result of a lack of such a contract between co-possessors on the transfer of possession of a real estate lawless appropriation of the real estate occurred after predecessors were deprived of their shares against their will. LEX/electronic

(located on an adjacent real estate) produces vapours which considerably exceed the admissible levels.

In case of the infringement of possession a perpetual lessee may demand in the suit brought to court e.g. pulling down a part or entire building erected on the land or with the boundary of adjacent land crossed, filling a pit which is a threat to the building erected on the neighbouring premises, removal of building materials stored on the real estate perpetually leased to him [Gniewek 2000, Suchoń 2009 b].

However, a negatory claim does not include seeking the relief of damage or especially the return of unjust enrichment. A perpetual lessee may pursue the relief of damage only within the claim for indemnity; he is then obliged to prove the existence of premises for such a claim.

A perpetual lessee may also build on the ground which is used based on perpetual usufruct (eg. livestock buildings). According to the Act of 7 July 1994 on Building Law particularly important concept for the construction process is the “right to use the property for construction purposes”, which is defined in Article 3 (11) of the said act [Ustawa... 2013]. This shall be understood as the legal title arising from ownership rights, perpetual usufruct, management, limited right in property, or obligation, providing for the right to perform construction works.

It is worth adding that perpetual usufruct is an institution unique to the Polish legal system. As already mentioned, it was introduced after World War II due to the acquisition of land by the state and the need to build on that land. When comparing the scope of rights of a perpetual lessee with the rights resulting from the legal institutions popular in other countries, we may observe certain similarities. These institutions, similarly as our perpetual usufruct, make it possible to carry out some projects on another person's land. For example, in Germany there is *Erbbaurecht*, called the right to building development, making it possible to carry out a building project on another person's land. It is a limited right in property, its object has to be real estate, while the entitled subject may be any subject allowed by applicable law; it is a transferable and hereditary right [Woźniak 2006]. In Spain there is *derecho de superficie*. A contract is concluded for a period of up to 99 years. The person using the land is granted the right of its building development. He may also dispose of it, e.g. transfer the right, mortgage it, etc. [Głuszak 2008]. In turn, in France we may indicate an institution of perpetual lease (*bail emphyteotique*). Within this institution the holder has a right to erect a building structure on it and utilize it [Woźniak 2006, Suchoń 2009 b].

FINANCIAL OBLIGATIONS OF A PERPETUAL LESSEE

More attention needs to be paid to perpetual lessees' financial obligations. The obligation to pay for the perpetual usufruct right results from Article 238 of the Civil Code [Ustawa... 1964] and Article 71 of the Act on Real Estate Management [Ustawa... 2014]. In case this right is established, a fee needs to be determined, being a mutual performance due to the owner of land (the State Treasury, a local government union or their unions). According to the Civil Code a perpetual lessee pays “annual fees”. In turn, according to the Act on Real Estate Management for the perpetually leased landed property “the first fee” and “annual fees” are payable (Article 71 item 1 of the Act)

[Ustawa... 2014]. The interest rate for the first annual fee ranges 15-25% of the real estate price. The first fee for leasing out the land property for perpetual usufruct without a tender is paid on a one-off basis but not later than by the day the agreement to lease out the property for perpetual usufruct is made. The first fee for leasing out the land property for perpetual usufruct without a tender can be paid in interest bearing instalments.

Thus the liberty of contract applies to this range of values. A separate issue is connected with allowances defined in the Act, which will be discussed in a further part of this publication. In contrast, the amount of annual fees varies considerably. It results from the general assumption of the Act that "the amount of interest rates for annual fees is dependent on the purpose specified in the contract, for which the real estate was perpetually leased" and it ranges from 0.3%, through 1%, up to 3% and more of the price of the real estate. If a landed property was perpetually leased for more than one purpose, the interest rate applicable for the annual fee is established for this purpose, which in the perpetual usufruct contract was specified as the primary purpose.

The amount of interest rates for annual fees is dependent on the purpose specified in the contract, for which the real estate was perpetually leased and amounts to, for instance for the land properties leased out for agricultural purposes – 1% of the price of property.

Annual fees are paid not later than on 31 March of each year of perpetual usufruct, in advance for the whole year. It has to be borne in mind that the fees are binding on all the other persons who acquire the perpetual usufruct right⁴. The annual fee is not paid for the year in which the perpetual usufruct right was created. Following the request filed by the perpetual lessee (not later than 14 days before the due date) a competent authority may set another due date within the same calendar year. A competent authority may reduce the first fee and annual fees based on, respectively, an ordinance passed by a voivoid or a resolution passed by a voivodship sejmik or board. The above-mentioned legal acts stipulate, in particular, the conditions of price reductions or the amounts of interest rates [Suchoń 2009 a].

As regards the lands taken over by the Agency of Agricultural Property which are perpetually leased, the Act of 19 October 1991 on Management of Agricultural Real Estate stipulates that annual fee for perpetual usufruct amounts to from 0,1% to 3%, (for agricultural purposes – 1%) of the price of the property determined in a way defined in regulations [Ustawa 2012 a]. Article 17b of the mentioned Act, establishing the amount of annual fee on account of perpetual usufruct of the property included in the Agricultural Property Stock of the State Treasury is a specific regulation in relation to Article 72 of the Act of Real Estate Management. In its judgement of 12 January 2011, the Supreme Court ruled that "...the linguistic interpretation of Article 17b (1) of the Act of 1991 on Management of Agricultural Real Estate of the State Treasury the amount of interest rate of annual fee for perpetual usufruct of the property included in the Agricultural Property Stock of the State Treasury is determined by the purpose the property leased out for perpetual usufruct is used for. According to the popular understanding of

⁴ The same ruling was given by the Supreme Court in its judgement of 16 December 1999, (II CKN 639/98), Lex/el.

these words that means using the property in accordance with its intended purpose of the property or helps to achieve that purpose⁵.

Another issue connected with annual fees is about updating the fee if the value of the real estate changes. In recent years the prices increased dramatically, then they remained stable and currently they are even going down in some regions compared, for example, with the prices in tender procedure (it refers, however, mainly to lands of no agricultural character). A modified annual fee is calculated based on the same interest rate and the value of the real estate determined on the day of updating the fee. The update is usually made routinely but the expenses incurred by the perpetual lessee to build particular technical infrastructure devices after the day of the last update are credited towards the difference between the existing fee and updated fee. The value of the outlays incurred by the perpetual lessee is also deducted from the updated fee if those outlays were not included in the previous fees, which acts as an instrument to encourage the perpetual lessee to make investments on state and municipal lands.

In the last years, increasing annual fees was one of the most crucial problems. It was connected with the increase in value of landed real estate leased out for perpetual usufruct. For many years it was possible to make changes to those fees annually, which caused dissatisfaction and lack of stability for perpetual lessees. That is why, the last amendment to the Act on Real Estate Management should be assessed as a positive one. Pursuant to Article 77 of the amended Act on the Real Estate Management, the amount of annual fee for perpetual usufruct of a landed property may be updated not more often than every three years if the value of the property changes [Ustawa... 2014]. That regulation has a positive influence on the continuity of perpetual usufruct [Suchoń 2011].

The perpetual lessee pays an agricultural tax. Pursuant to Article 3 of the Act of 15 October on Agricultural Tax, an agricultural tax is paid by natural persons, legal persons and organizational unit, including companies, without legal personality which are, for example, perpetual lessees of lands [Ustawa... 2006]. Agricultural tax is paid on lands listed in the Land and Building Register as cultivated lands or wooded lands in the cultivated lands, except for the lands designed to run a business, non-agricultural activity. Additionally, perpetual usufruct was also taken into consideration in terms of tax exemption and incentives connected with enlarging a farm. That tax incentive is granted to lands designed to form a new farm or extend an existing one to a surface area not exceeding 100 ha: a) which are owned or leased out for perpetual usufruct under the contract of sale, b) which are the object of the contract of leasing them out for perpetual usufruct, c) which are included in the Agricultural Property Stock of the State Treasury, included in permanent land development.

TRANSFORMING PERPETUAL USUFRUCT INTO OWNERSHIP

Majority of perpetual lessees find purchasing the lands they hold in perpetual usufruct a very attractive solution. That is connected mainly with the fact that prices of agricultural real estate are higher and higher. According to Article 37(1) of the Act on Real Estate Management – a real estate is transferred in a non-bidding procedure if e.g. the real estate is sold to the perpetual lessee. In turn, in view of Article 32(1) of the

⁵ I CSK 98/10, LEX/el., No. 724986.

above-mentioned legal act, the perpetually leased landed property may be sold solely to the perpetual lessee [Ustawa... 2014]. There is an exception to this rule. In relation to the perpetually leased landed property, transfer of ownership of this real estate by contract between the State Treasury and a unit of local government and between units of local government may be executed by notice to its perpetual lessee.

A crucial role is played by the Act of 29 July 2005 on the Transformation of Perpetual Usufruct Right into Property Right to Real Estate [Ustawa... 2012]. The following entities may demand that the right of perpetual usufruct be transformed into the ownership: natural and legal persons who were on 13 October 2005 perpetual lessees of the property. It can be also done by natural and legal persons who are legal successors of the entitled persons. The Act in question refers to legal succession but it does not specify the type of succession. There are two types of legal succession: universal succession and singular succession [Jelonek-Jarco and Józefiak 2008]. The former includes inheriting as well as merging or transforming of legal persons. It is assumed that the above-mentioned Act refers to both types of successions, both universal and singular. [Jelonek-Jarco and Józefiak 2008].

A decision to transform the right of perpetual usufruct into the ownership title to the property is passed by: 1) a county head [Polish: starosta] – in case of real estate owned by the State Treasury, including also real estate, in relation to which ownership right of the State Treasury is exercised by other state legal persons, 2) a commune head, mayor, president of city, county council or province council, respectively – in case of real estate owned by units of local government. A person, for the benefit of whom perpetual usufruct right was transformed into ownership right to real estate, is generally obliged to pay a fee for this transformation to the previous owner. The fee may be, upon the request of a perpetual lessee, arranged to be paid in instalments for the period not shorter than 10 years and not longer than 20 years unless the perpetual lessee applies for a shorter period than 10 years [Suchoń and Wajszczuk 2009].

The research done by economists has shown that if the perpetual lessee files an application earlier, the value of the right of perpetual usufruct is higher compared to the value of ownership title. Therefore, the perpetual lessee will pay less for the ownership right. The amount of fee for transforming the right of perpetual usufruct into the ownership right to the property increases as the number of years of not used perpetual usufruct decreases. The increase in the interest rate of the annual fee has influence on increasing the fee for transforming the right of perpetual usufruct into the right of ownership [Dobek and Wajszczuk 2009].

EXPIRY OF PERPETUAL USUFRUCT

A treat to the agricultural activity is connected with premature termination of a contract of perpetual usufruct. Perpetual usufruct expires with the date stipulated in the contract or by the termination of the contract before its expiry. As it is commonly known, the parties by mutual agreement may at any time terminate the contract. In turn, the owner may give notice of termination of the perpetual usufruct contract in cases explicitly specified in the regulations. According to Article 240 of the Civil Code the contract for perpetual lease of land owned by the State Treasury or land belonging to

local government units or their unions may be terminated before the stipulated expiry date if the perpetual lessee uses land in a manner clearly contrary to its purpose defined in the contract, particularly if against the contract the lessee did not erect specified buildings or facilities [Ustawa... 1964].

Thus, if the perpetual lessee uses the real estate in a manner contradictory to the contractual stipulations, particularly if he did not erect buildings in the specified time limit, a competent agency may file for the termination of the contract. Such agencies include county authorities and in case of real estate within the resources of a local government unit it is the commune leader, county or province administration.

In view of the presently binding regulations, in case of the expiry of perpetual usufruct, the annual fee for the year in which the said expiry took place, is reduced in proportion to the duration of perpetual usufruct within this year (Article 33(3a) of the Act on Real Estate Management) [Ustawa... 2014].

In case of the expiry of perpetual usufruct as a result of the expiry of the period defined in the contract or as a result of the termination of the contract before the expiry of this period, the perpetual lessee is entitled to the compensation for the buildings and other facilities erected or purchased by him. When determining the amount of this compensation the agency needs to take into consideration the value of these buildings and facilities on the day of expiry of the perpetual usufruct. However, no compensation is due for buildings and other facilities erected contrary to the stipulations of the contract for perpetual lease of land. Expiry of perpetual usufruct results in a simultaneous *ex lege* expiry of charges imposed on it. In this manner all and any charges expire, i.e. first of all limited rights in property (use, servitude, mortgage), as well as the right to lease and perpetually lease as well as rights and personal claims revealed in the land and mortgage register [Gniewek 2000].

PERPETUAL LESSEE AS AN AGRICULTURAL PRODUCER

The most important issues for a perpetual lessee of agricultural lands, in terms of the agricultural activity he runs are the issues connected with financing. The perpetual lessee can apply for the EU funds. The Act of 26 January 2007 on Direct Payments within Direct Support Schemes lays down that in order to acquire a single area payment and other payments defined in the legal act in question it is necessary to meet numerous requirements, for instance to possess farmlands of a total surface area not smaller than 1 ha, maintaining the farmlands according to the principles within the whole calendar year in which the payment application was submitted and holding an identification number given under the regulations on the national register of producers, farms and payment applications [Ustawa... 2008]. The perpetual lessee, however, has to run actual agricultural activity on these lands. It was emphasised by the Supreme Administrative Court in its decision of 29 October 2011 ruling that in order to get direct payments it is not enough to own agricultural lands in the meaning of the Polish Civil Code but it is necessary to use an agricultural farm in an agricultural way which takes form of agrotechnological actions (farming a land)⁶.

⁶ (II GSK 1177/10), LEX No. 1151564.

Apart from area payments, agricultural producers often apply for less favoured areas payments (LFA), the aim of which is to compensate them for additional costs and lost income resulting from unfavourable conditions for agricultural activity in a given area. The payments can be granted to an entity which possesses agricultural lands of the surface area of at least 1 ha if at least a part of these lands is located in the less favoured areas. The farmer who is granted the payment obliges himself to continue agricultural activity in the less favoured areas for at least five years from the first payment.

A perpetual lessee or a person intending to acquire the right of perpetual usufruct could apply for funds designed for agricultural producers starting to run an agricultural farm. The principles of granting the funds were laid down in the regulation of the Minister of Agriculture and Rural Development of 17 October 2007 on Detailed Conditions and Procedures for Granting Financial Aid under the Measure "Helping young farmers to set up in business" under the Rural Development Plan for 2007-2013 [Rozporządzenie... 2007]. To be granted a bonus amounting to PLN 100 thousand it was essential to meet a number of requirements, e.g. a minimum surface area of an agricultural farm. In order to calculate that surface, a surface area of usable agricultural lands constituting the object of the following should be added: ownership, perpetual usufruct, lease.

An individual person running an agricultural farm and using only lands held in perpetual usufruct can be qualified as an individual farmer. Under the Act on Formation of Agricultural System, an individual farmer is a natural person who is an owner, perpetual lessee, autonomous possessor or a lessee of agricultural property whose total surface area of agricultural lands does not exceed 300 ha, having agricultural qualifications and residing for at least 5 years in the commune where one of the agricultural properties included in the agricultural farm is located, and running the farm in person [Ustawa... 2012 b].

A perpetual lessee can by law or on request be insured in the Farmers' Social Security Fund (KRUS). Under the Act of 20 December 1990 on Social Insurance of Farmers [Ustawa... 2008], a farmer whose farm includes the surface area of agricultural lands exceeding 1 calculating ha or a special section is by law insured in KRUS. A definition of a farmer refers to a natural person of a legal age residing and running in person and on his own account a business activity in Poland in the farm he holds in possession, also within the group of agricultural producers as well as a person who allocated the lands of his agricultural farm for forestation (Article 6(1) of the Act). Thus, perpetual lessee who possesses agricultural lands and meets the above-mentioned conditions qualifies to be a farmer under the Act of Social Insurance of Farmers and, as a result, is covered by an agricultural insurance.

It is essential to emphasize a positive effect of the possibility to lease the perpetually leased agricultural lands in order to get a part of a supplementary agricultural pension from KRUS. Under the regulations, the pensioner has stopped running an agricultural activity if neither he nor his spouse owns (co-owns) or possesses and agricultural farm as specified in agricultural tax regulations, excluding: 1) lands leased under a written agreement made for at least 10 years and entered into Land and Property Register to a person who is not: a) pensioner's spouse, b) pensioner's descendant or stepchild, c) person running a common household with a pensioner, d) a spouse of a person mentioned in (b) or (c). What is more, the Supreme Court in its judgement of 18 January

2012 ruled that the insured in KRUS is entitled to agricultural pension in full amount if he leases out his land to his child⁷.

A perpetual lessee running an agricultural activity can also be a member of groups of agricultural producers or initially recognized or recognized groups of agricultural producers provided he meets the requirements defined in regulations, statutes or agreements.

CONCLUSIONS

The above analysis makes it possible to conclude that a perpetual lessee has a wide range of entitlements, which has a positive effect on a conducted business activity. He can dispose of the property freely and use this right at his discretion. The advantages of perpetual usufruct include its long term (99 years with the possibility to extend it), right to build up a plot (but it has to be remembered that the buildings belong to the perpetual lessee). In recent years, however, the stability of perpetual usufruct was threatened by common increases of perpetual usufruct charges. That was a significant factor as the prices of agricultural lands have been growing. That is why a credit needs to be given to the amendment to the Act on Real Estate Management introducing the rule that the charges can be modified not sooner than 3 years after the last modification. Another positive factor is the fact that a perpetual lessee is entitled to apply for EU funds, primarily direct payments, less favoured areas payments, bonus for a young farmer. The legislator has also given the perpetual lessee the right to be granted a status of an individual farmer. The Act on Agricultural Tax, on the other hand, lists perpetual usufruct as a legal title to extend the farms which entitles to tax benefits. The legislator has rightly decided that perpetual usufruct, next to the most popular forms of holding agricultural lands, like ownership and lease, has become a permanent element also of rural relationships. Thus it does not relate only to cities and lands are not intended only for construction purposes.

It needs to be noticed, however, that perpetual usufruct has currently been raising a heated discussion connected with its history. In 2003 a parliamentary committee discussed a parliamentary bill on transforming *ex lege* existing rights of perpetual usufruct into right of ownership when the act comes into force⁸. The proposal aiming at liquidating perpetual usufruct was not accepted. There are many contradicted opinions about perpetual usufruct among both economists and lawyers. Perpetual usufruct seems to have a future in Poland and it is not a good idea to eliminate it [Dobek et al. 2009]. It needs to be emphasized that proposals of free-of-charge enfranchisement of perpetual lessees violate Article 32 of the Polish Constitution, which obligates to treat all the citizens in an equal way [Kaśnikowska 2005]. If the case of paid transformation, by virtue of law, of the right of perpetual usufruct into the right of ownership, not all perpetual lessee would have sufficient financial funds to purchase the lands. It is particular-

⁷ (II UK 82/11), LEX, No. 1163001.

⁸ Sejm paper No. 1695 z 2003. According to that bill every perpetual lessee, irrespective of the purpose of the real estate and his own legal status (natural or legal person) would, when the act come into force, become the owner of the land that he holds in perpetual usufruct [Truszkiewicz 2006].

ly important in relation with agricultural lands whose price increase on a yearly basis. Undoubtedly, voluntary transformation of the right of perpetual usufruct into the right of ownership regulated in the Act on the Transformation of the Right of Perpetual Usufruct into the Ownership Right should be assessed in a positive way.

REFERENCES

- Dobek A., Wajszczuk K., 2009. Ocena opłacalności przekształcenia prawa użytkowania wieczystego w prawo własności nieruchomości. In: *Perpetual usufruct. Legal and economic issues. Problems of transformation and appraisal*. Eds A. Dobek, A. Suchoń, K. Wajszczuk, W. Wielicki. Wyd. IURIS, Warszawa-Poznań, 74-78.
- Głuszak M., 2008. Użytkowanie wieczyste w kontekście rozwiązań stosowanych w wybranych krajach europejskich. *Świat Nieruchomości* 66, 29-30.
- Gniewek E., 1999. *Obrót nieruchomościami skarbowymi i samorządowymi*. Zakamycze, Kraków.
- Gniewek E., 2000. *Kodeks cywilny. Księga druga. Własność i inne prawa rzeczowe. Komentarz*. Zakamycze, LEX/elektroniczny.
- Jelonek-Jarco B., Józefiak A., 2008. *Komentarz do ustawy z dnia 7 września 2007 r. o zmianie ustawy o przekształceniu prawa użytkowania wieczystego w prawo własności nieruchomości oraz niektórych innych ustaw, w zakresie zmian do ustawy z dnia 29 lipca 2005 r. o przekształceniu prawa użytkowania wieczystego w prawo własności nieruchomości*. Warszawa, LEX/elektroniczny.
- Kaśnikowska H., 2005. Informacja do ustawy o przekształceniu prawa użytkowania wieczystego w prawo własności nieruchomości oraz o zmianie niektórych ustaw. <http://ww2.senat.pl/k5/dok/opinia/2005/086/1027.HTM> [dostęp: 20.10.2014].
- Kodeks cywilny. Komentarz. T. 2.* 2000. Ed. K. Pietrzykowski. Wyd. Beck, Warszawa.
- Rozporządzenie Ministra Rolnictwa i Rozwoju Wsi z dnia 17 października 2007 r. w sprawie szczegółowych warunków i trybu przyznawania pomocy finansowej w ramach działania „Ułatwianie startu młodym rolnikom” objętego Programem Rozwoju Obszarów Wiejskich na lata 2007-2013. 2007. Dz.U. Nr 200, poz. 1443.
- Suchoń A., 2009 a. Oplaty za użytkowanie wieczyste [Perpetual usufruct fees]. In: *Perpetual usufruct. Legal and economic issues. Problems of transformation and appraisal*. Eds A. Dobek, A. Suchoń, K. Wajszczuk, W. Wielicki. Wyd. IURIS, Warszawa-Poznań, 25-32.
- Suchoń A., 2009 b. Podstawowe zagadnienia prawne dotyczące użytkowania wieczystego [Basic legal issues concerning perpetual usufruct]. In: *Perpetual usufruct. Legal and economic issues. Problems of transformation and appraisal*. Eds A. Dobek, A. Suchoń, K. Wajszczuk, W. Wielicki. Wyd. IURIS, Warszawa-Poznań, 9-23.
- Suchoń A., 2011. Prawne formy władania gruntami przez spółdzielnie funkcjonujące w rolnictwie i na terenach wiejskich. *Przeł. Prawa Roln.* 2, 71-89.
- Suchoń A., Wajszczuk K., 2009. Przekształcanie prawa użytkowania wieczystego w prawo własności [Transformation of perpetual usufruct right into ownership right]. In: *Perpetual usufruct. Legal and economic issues. Problems of transformation and appraisal*. Eds A. Dobek, A. Suchoń, K. Wajszczuk, W. Wielicki. Wyd. IURIS, Warszawa-Poznań, 72-86.
- Szachułowicz J., Krassowska M., Łukaszewska A., 2002. *Gospodarka nieruchomościami. Przepisy i komentarz*. Wyd. Prawnicze PWN, Warszawa.
- Truskiewicz Z., 2006. *Użytkowanie wieczyste – Zagadnienia konstrukcyjne*. Zakamycze, Kraków.
- Ustawa z dnia 23 kwietnia 1964 r. – *Kodeks cywilny*. 1964. Dz.U. Nr 16, poz. 93 ze zm.
- Ustawa z dnia 14 lipca 1961 r. o gospodarce terenami w miastach i osiedlach. *Tekst jedn.* 1969. Dz.U. z 1969 r. Nr 22, poz. 159 ze zm.
- Ustawa z dnia 15 listopada 1984 r. o podatku rolnym. *Tekst jedn.* 2006. Dz.U. z 2006 r. Nr 136, poz. 969 ze zm.

- Ustawa z dnia 20 grudnia 1990 r. o ubezpieczeniu społecznym rolników. Tekst jedn. 2008. Dz.U. z 2008 r. Nr 50, poz. 291 ze zm.
- Ustawa z dnia 19 października 1991 r. o gospodarowaniu nieruchomościami rolnymi Skarbu Państwa. 2012 a. Dz.U. z 2012 r., poz. 1187.
- Ustawa z dnia 11 kwietnia 2003 r. o kształtowaniu ustroju rolnego. Tekst jedn. 2012 b. Dz.U. z 2012 r., poz. 803.
- Ustawa z dnia 29 lipca 2005 r. o przekształceniu prawa użytkowania wieczystego w prawo własności nieruchomości. Tekst jedn. 2012 c. Dz.U. z 2012 r., poz. 83.
- Ustawa z dnia 7 lipca 1994 r. – Prawo budowlane. Tekst jedn. 2013. Dz.U. z 2013 r., poz. 1409 ze zm.
- Ustawa z dnia 21 sierpnia 1997 r. o gospodarce nieruchomościami. Tekst jedn. 2014. Dz.U. z 2014 r., poz. 518.
- Woźniak C., 2006. Użytkowanie wieczyste. C.H. Beck, Warszawa.

UŻYTKOWANIE WIECZYZSTE GRUNTÓW ROLNYCH – WYBRANE ZAGADNIENIA PRAWNE I FINANSOWE

Streszczenie. Celem artykułu była próba ustalenia, czy regulacje prawne zapewniają użytkownikom wieczystym stabilne warunki władania gruntami rolnymi oraz prowadzenia na nich działalności rolniczej, a także, czy ułatwiają tym podmiotom nabycie własności posiadanych gruntów. W pierwszej kolejności rozważania skupiały się na charakterze prawnym użytkowania wieczystego oraz uprawnieniach i obowiązkach finansowych użytkownika wieczystego. Następnie podjęto tematykę przekształcania użytkowania wieczystego we własność oraz wygaśnięcia użytkowania wieczystego. Kolejna część artykułu odnosiła się do zagadnienia użytkownik wieczysty jako producent rolny. W podsumowaniu stwierdzono, że rozważania wykazały, iż użytkownik wieczysty ma szeroki zakres uprawnień i może on swobodnie prowadzić działalność rolniczą na gruntach rolnych. Ustawodawca uznał bowiem, że użytkowanie wieczyste, obok najpopularniejszych form władania gruntami rolnymi, jak własność i dzierżawa, wpisało się trwale w stosunki wiejskie i dlatego użytkownik wieczysty może korzystać ze środków unijnych, ulg w podatku rolnym czy ubezpieczenia w KRUS.

Słowa kluczowe: użytkowanie wieczyste, grunty rolne, działalność rolnicza, płatności unijne

Accepted for print – Zaakceptowano do druku: 29.09.2014

For citation – Do cytowania: Suchoń A., 2014. Perpetual usufruct of agricultural lands – selected legal and financial issues. J. Agribus. Rural Dev. 4(34), 159-171.