

Jurisdiction over Agricultural Legal relations in Poland

Cuestiones sobre jurisdicción agraria en Polonia

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Recibido/Received: 10/02/2024. Aceptado/Accepted: .07/03/2024

Cómo citar/How to cite: Dobkowski, Jarosław. y Lipińska. Izabela, “Jurisdiction over Agricultural Legal relations in Poland”, Revista Española de Estudios Agrosociales y Pesqueros 264 (2024): 106-129. DOI: <https://doi.org/xxx/xxx>.

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DOI: <https://doi.org/10.24197/reecap.262.2024.106-129>

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Resumen: El objetivo de este trabajo es plantearse la creación de tribunales especializados en Polonia para resolver los litigios de derecho agrario. Asimismo, el estudio pretende determinar ciertas particularidades de las relaciones agrarias, e indicar las autoridades competentes para conocer de estos asuntos. Como muestran las conclusiones, la jurisdicción agraria no existe en el ordenamiento jurídico polaco, y no hay normas uniformes para identificar los tribunales competentes para resolver los casos agrarios. Por lo tanto, los conflictos individuales y los litigios en materia de derecho agrario se han asignado a los tribunales generales y a las autoridades de la administración pública. En consecuencia, la jurisprudencia es heterogénea tanto en lo que respecta a las decisiones como a los procedimientos

empleados. De ahí que el estudio haya constatado la existencia de límites competenciales difusos y la inexistencia de un objeto común de las acciones interpuestas. En la práctica, tanto por lo que se refiere al fondo como al procedimiento, los asuntos agrícolas se clasifican como asuntos civiles o administrativos. Así mismo, los jueces no están especializados en derecho agrario. Lo anterior justifica la adopción de soluciones normativas específicas en la codificación del derecho agrario, o la elaboración de una ley específica que establezca disposiciones generales al respecto. El ámbito de aplicación de dicha norma se correspondería con el campo de aplicación de la legislación agraria como ámbito jurídico independiente. Así, un asunto derivado de las relaciones agrarias o, en términos más amplios, un asunto agrario se basaría en un marco normativo general. Al analizar la cuestión se constata la necesidad de establecer un sistema jurisdiccional separado, o incluso de designar autoridades dedicadas y altamente especializadas, dotadas de independencia y autonomía jurisdiccionales, que podrían organizarse como tribunales agrarios.

Palabras clave: Jurisdicción, Actividad Agraria, Relación Jurídica, Órganos Judiciales, Administración Agraria.

Abstract: The purpose of this paper was to answer the question whether specialized courts should be established in Poland to rule on agricultural law cases. Also, the study intended to determine certain particularities of cases related to agricultural relations, and to indicate the authorities competent to deal with these matters.

As shown by the findings, agricultural jurisdiction does not exist in the Polish legal system, and there are no uniform rules for identifying the competent courts to resolve agricultural cases. Hence, individual cases and disputes under agricultural law have been assigned to general courts and public administration authorities. As a consequence, the case-law is heterogeneous in terms of both the deciding authorities and procedures employed. Hence, the study found blurred boundaries of jurisdiction and no common subject of actions brought before these authorities. In practice, as regards both substance and procedure, agricultural cases are classified as civil or administrative matters. Furthermore, the judges do not specialize in agricultural law. As noted earlier, the above provides grounds for adopting specific normative solutions in codifying the agricultural law, or for developing a dedicated act laying down general provisions thereon. The scope of that regulation would correspond to the field of application of agricultural legislation as a separate area of law. Thus, a case arising out of agricultural relations or, in broader terms, an agricultural case would be based on a normative framework. In exploring that topic, the authors found the need for establishing a separate jurisdictional system, or even for appointing dedicated, highly specialized authorities vested with jurisdictional independence and autonomy, which could be organized as agricultural tribunals.

Keywords: Jurisdiction, Agricultural Activity, Legal Relation, Judicial Bodies, Agricultural Administration.

INTRODUCCIÓN

This paper focuses on topics related to the organization of agricultural jurisdiction in Poland. A major part of the economy at both national and Union levels, the agri-food sector comprises a total of ca. 10 million farmers. The particularities of their activity are determined by extremely numerous legal provisions set out in normative acts of which most belong to civil or administrative law. The former are governed by regulations

related to ownership, its transition and succession, and the performance of agreements. In turn, the administrative law is applicable, for instance, to: financial matters relating to different charges involved in running a business; support for farmers; implementing the assumptions behind the Common Agricultural Policy; farmland transactions (in broad terms); quantitative and qualitative protection of farmland; environmental protection; and the functioning of public authorities. Farming faces some unique challenges which may add uncertainty and unpredictability to an agricultural business. This gives rise to legal events which require specific solutions to be adopted by the judicial system in a broad sense. The above means activities performed pursuant to Article 175 of the Constitution of the Republic of Poland by the judicial system, including general courts and administrative courts.

Addressing the topic of these considerations is justified by a number of reasons, including cognitive, socioeconomic and practical aspects. As regards the first group, note that issues related to agricultural jurisdiction are new in Poland, despite dedicated authorities being established at different levels over the centuries to give rulings on agricultural matters. In this context, note the 1928 Draft Agricultural Code by professor Władysław Leopold Jaworski, which identifies the need for administrative courts having specific competence¹ to settle agrarian cases. As provided for in Article 236 of the Draft, administrative courts shall be vested with the authority to settle cases related to public administration of agriculture, in which the parties are either public bodies or private operators. As the first step, such cases shall be entrusted to them under a dedicated Act. The courts were supposed to be established by their presidents on an as-needed basis (Article 240 the Draft). The analysis of the Draft provides grounds for concluding that the then-envisaged model was expected to be underpinned by administrative jurisdiction, and be controlled by a specialized agrarian court.

As regards socioeconomic aspects, agricultural jurisdiction is essential for the efficient performance of public tasks in the area of agriculture, for ensuring an efficient operation of the public administration system in the farming sector, and for guaranteeing the security, stability and certainty of law (which includes empowering agricultural producers and laying a framework for agricultural transactions). Also, it should

¹ See JAWORSKI, Władysław Leopold, *Projekt Kodeksu Rolnego* (Draft Agricultural Code), Warsaw, 1928.

guarantee the freedom of social and economic activity of farmers and the openness of defined statuses and relationships under the agricultural law.

The topics addressed in this paper are also crucial due to practical aspects. Namely, as noted earlier, cases under agricultural law are often complicated and diverse, and relate to different areas of law. But most importantly, they are impacted by an increasingly broad range of legal standards, which is partly due to Poland being part of the European Union. These circumstances require both the ruling authorities and other parties to the proceedings to be very precise in how they identify, understand and apply specific legal solutions.

Therefore, the purpose of this paper is to answer the question whether specialized courts should be established in Poland to rule on agricultural law cases. Moreover, the paper is intended to determine the nature of these cases, and to identify the judicial authorities having competence to settle individual cases under agricultural law.

Jurisdiction over agricultural cases in most European Union member states is subject to the ordinary judiciary. A special judiciary in this area exists, for example, in Italy, France or Germany. In addition, a small number of countries have qualified independent specialists in specific categories of cases, mainly related to agricultural leases (the United Kingdom, the Netherlands)². Special agricultural jurisdiction exists in many countries, and is relatively widespread in Latin America³. For instance, the Costa Rican legislator decided that disputes arising out of the application of agricultural jurisdiction shall be viewed as a protection of specific “legal situations and relations⁴.” In turn, the legislator used productive

² JUCHNICKI, Marek, “Sprawozdanie z XXIV Kongres i Kolokwium Europejskiego Prawa Rolnego (Caserta, Włochy, 26-29 IX 2007)” (Report on the 24th Congress and Colloquium on European Agricultural Law (Caserta, Italy, Sep 26–29 IX 2007)), *Państwo i Prawo*, No. 3, (2007), pp. 136–138.

³ For instance: ACOSTA, Rolando Pavò, *La Justicia Agraria y sus Desafíos*, Plaza de la Revolución, Cuba: Unión Nacional de Juristas de Cuba; M. C. Padron, *Breve historia de los tribunales agrarios en Mexico, al traves del articulo 27 de la Constituzion Federal*, *Revista de la Facultad de Derecho de Mesico*, Vol. LXVII Mayo-Agosto, No. 183-184, (2017), pp. 37-67; RUIZ, Yadira del Carmen Calero, *Derecho Agrario*, (Abril 2006), Managua, pp. 1-50. An analysis of these models in MUÑIZ ESPADA, Esther, *La especialización de los órganos judiciales en Derecho agrario*, Madrid, Reus, 2023, pp. 89 y ss.

⁴ See: CHACÓN, Enrique Ulate, “La reforma procesal y competencia de la jurisdicción agraria en Costa Rica”, *Przegląd Prawa Rolnego (Agricultural Law Review)*, No. 2, (2022), pp. 137–177.

agricultural activity (whether primary or secondary) as a criterion in determining the operational competence of agricultural courts. As provided for in Article 2h) of the Act on the Competence of Agricultural Courts, agricultural courts shall have the competence over any and all disputes related to activities and agreements to which a farmer is a party, and which arise out of “an activity related to the production, processing, industrialization and sale of agricultural produce⁵.”

1. JURISDICTION IN CASES RELATED TO AGRICULTURAL LEGAL RELATIONS: A HISTORICAL PERSPECTIVE

In 1918, following its independence, Poland had a number of diverse judicial and quasi-judicial authorities in place to rule on individual cases in the agriculture and rural development sector. Cases under agricultural law continued to be triable by general courts.

Land Offices operated pursuant to the provisions of a decree issued by the Regency Council of the Kingdom of Poland of October 11, 1918 on transitional regulations for Land Offices⁶, and pursuant to the Decision of the Council of Ministers of October 19, 1918 appointing District Land Commissions⁷. Their responsibility was to settle land disputes. An important role was played by land commissioners (having the authority to approve conciliation arrangements) and District Land Commissions. They operated in Warsaw, Łomża, Łódź, Kielce and Lublin, and issued firm decisions having the same effect as a court ruling.

The operation of the General Land Commission together with District Land Commissions was governed by the Act of July 22, 1919 on establishing the Head Land Office⁸, and by the Regulation of the Council of Ministers on transferring the competence for Land Offices and related cases and agendas from the Ministry of Agriculture and State Property to the Head Land Office⁹. The decisions issued by the former were final, although subject to extraordinary inspection by the Supreme Court. District Land Commissions operated in Warsaw, Kielce, Łomża, Lublin, Piotrków, Płock and Siedlce; in turn, Poznań was home to the Settlement

⁵ Agricultural Jurisdiction Act No. 6734 of March 29, 1982

⁶ Journal of Laws of the Kingdom of Poland, No. 11, Item 22.

⁷ Journal of Laws of the Kingdom of Poland, No. 13, Item 25.

⁸ Polish National Journal of Laws, No. 63, Item 376.

⁹ Journal of Laws of 1919, No. 76, Item 436.

Commission. Also, there were Special Agrarian Commissions in the former Austrian Partition.

Later, the Act of July 6, 1920 on the organization of Land Offices¹⁰ provided grounds for the establishment of District Land Commissions of District Land Offices. Their responsibility, as a first-instance authority, included without limitation settling any and all disputes arising out of a regulatory procedure for the consolidation and conversion of land, the abolishment of easement, and the division and regulation of communities, provided that such cases were not referred to courts under applicable acts. In turn, the General Land Commission had the competence, as the second and the final instance, to rule on appeals against the decisions of a Land Commission District, without limitation.

Conversely, the Act of August 11, 1923 on the scope of activities of the Minister of Agrarian Reforms and on the organization of Land Offices and Commissions¹¹ laid grounds for the functioning of District Land Commissions. Their responsibility included without limitation ruling on any and all disputes arising out of a regulatory procedure for the consolidation and conversion of land, the abolishment of easement, and the division and regulation of communities, and on cases related to the regulation and removal of deeds. This means cases relating to the organization of land held by farmers in the former Russian Partition, provided that they were not referred to courts pursuant to applicable acts. The General Land Commission continued to be active, and was competent to rule on appeals (as the second and the final instance) against decisions issued by District Land Commissions.

Pursuant to the Legislative Decree of October 27, 1933 on the consolidation of Land Offices with general administrative authorities and on the organization of Land Commissions¹², a Voivodeship Land Commission was established (under the Minister of Agriculture and Agrarian Reforms) for each voivode to rule on cases referred to it under applicable Acts. Conversely, the General Land Commission ruled on appeals brought against the judgments of Voivodeship Land Commissions. Note also that cases falling under the competence of Land Commissions could not be brought before civil law courts.

¹⁰ Journal of Laws (Dz.U.), No. 70, Item 461.

¹¹ Journal of Laws (Dz.U.), No. 90, Item 706.

¹² Journal of Laws (Dz.U.), No. 85, Item 635.

After World War 2, the General Land Commission continued to operate under the Minister of Agriculture and Agrarian Reforms pursuant to the Decree of September 13, 1946 on the organization of Land Commissions¹³. In the new legal ecosystem, it ruled (as a second-instance authority) on the appeals from decisions issues by Voivodeship Land Commissions established under the voivodes. Their responsibilities included ruling on the consolidation of land, the abolishment of easement, the division of communities, and on other cases, as and if falling under their competence in accordance with specific regulations. Also, the General Land Commission examined the appeals from the decisions of District Land Commissions established under county governors. In turn, the District Land Commissions rules on all cases which—pursuant to specific regulations—required the participation of a plenipotentiary in charge of the agrarian reform.

Note also that as early as in 1933, pursuant to the Act of March 28, 1933 on Redress Offices ruling on property disputes between farm owners¹⁴, Voivodeship Redress Offices were established under the voivode to rule on property disputes between farm owners; and District Redress Offices ruling on property disputes between farm owners were established under District Commune Unions. Arrangements approved and decisions issued by the respective Redress Offices had the same legal effect as court rulings and were legally enforceable.

In accordance with the Act of October 26, 1971 on regulating farm ownership¹⁵, the body of the Bureau of the District National Council having competence over agricultural matters had the power to recognize the acquisition of a property by an individual owner, and to rule on transferring a property to its beneficial owner by issuing a land property deed. Nevertheless, the body having competence over agricultural matters could refer certain complicated or contentious cases to the District Enfranchisement Commission. The decision issued by the latter could be appealed from to the Voivodeship Enfranchisement Commission whose ruling was final.

Despite the appointment of multiple authorities ruling on specific agricultural cases, Poland ultimately did not establish separate agricultural tribunals, land courts, agrarian commissions or other forms of jurisdiction

¹³ Journal of Laws (Dz.U.), No. 61, Item 340.

¹⁴ Journal of Laws (Dz.U.), No. 29, Item 253.

¹⁵ Journal of Laws (Dz.U.), No. 27, Item 250.

applicable to agricultural relations. In hindsight, this seems to be part of a “wait and see” policy, and the effects of this state of affairs are felt to this day.

2. ESSENCE AND STRUCTURE OF JURISDICTION IN INDIVIDUAL CASES

In addition to *jurysdykcja*, a term which means “jurisdiction,” as used in the title of this paper, the Polish legal vocabulary also includes similar expressions, namely *jurydyzacja*, *jurydyfikacja* and *judycjalizacja*, sometimes viewed as synonyms¹⁶. However, a distinction needs to be made between them because each refers to different legal concepts¹⁷.

The term *jurysdykcja* (jurisdiction) itself has multiple meanings in Poland, especially with respect to such legal expressions as “territorial jurisdiction” or “national jurisdiction.” That kind of jurisdiction implies the government’s right to encroach upon the rights and obligations of individuals, which represents the territorial sovereignty of the state (*de iure imperii*).

The origin of the term provides some interesting insights; “jurisdiction” derives from the Latin word *iurisdictio*, which means “to declare the law.” In other words, according to etymology, jurisdiction means the right to rule. Today, jurisdiction can be viewed as certain privileges vested in an authority or other body; the competence to examine and settle specific cases, including to provide a statement regarding the substance of the case, as delegated by the state.

Hence, rather than the *jurisdiction to prescribe*, it means the *jurisdiction to enforce*¹⁸.

¹⁶ See KOWALCZYK, Barbara, *O pojęciu jurysdykcji międzynarodowej organu administracji publicznej (Considerations on the term of international jurisdiction of a public administration authority)* [in:] *Kierunki rozwoju jurysdykcji administracyjnej (Development paths of administrative jurisdiction)*, eds. KRUS Maciej, STANISZEWSKA Lucyna and SZEWCZYK Marek, Warsaw, 2022, p. 499 et seq.

¹⁷ DOBKOWSKI, Jarosław, *Zagadnienie jurydyfikacji administracyjnej (The issue of administrative juridification)*, [in:] *Kierunki rozwoju jurysdykcji administracyjnej (Development paths of administrative jurisdiction)*, eds. SZEWCZYK, Marek, STANISZEWSKA, Lucyna and KRUS, Maciej, Warsaw, 2022, p. 457.

¹⁸ ŁASZCZYCA, Grzegorz, *Jurysdykcja administracyjna (Administrative jurisdiction)* [in:] *System prawa administracyjnego procesowego, zagadnienia ogólne (The system of administrative procedural law: general issues)*, eds. ŁASZCZYCA Grzegorz, Warsaw, p. 2017 et seq.; ISERZON Emanuel, “Fundamentum regnorum”, *Nowe Prawo* No. 2

Generally, it deals with individual cases, as opposed to general ones. An individual case relates to individuals or entities, and to specific circumstances or facts, which makes it specific in a dual sense. An act of jurisdiction is an implementation of law with respect to clearly identified individuals or entities, and determines their legal reality at a given time and place¹⁹.

In Poland, the right to exercise jurisdiction is not solely vested in the courts; some public authorities are also entitled to investigate and settle individual cases²⁰. In other words, individual cases can be subject to either judicial or administrative proceedings. Neither of them is superior to the other (as it is the case for instances); instead, they operate in parallel. The legislator exercise their best efforts to indicate—in an unambiguous and relatively detailed manner—the authority competent to rule on specific matters. This provides grounds for making a distinction between “court jurisdiction” and “administrative jurisdiction.”

3. DEFINING A CASE UNDER AGRICULTURAL LAW

In general terms, a “case” means a set of circumstances that affect a person or an object. Alternatively, it may also be something of interest to a particular person²¹. Nevertheless, there is no single definition of a “case” in the legal sense; its meaning differs between the areas of law. A

(1960), p. 161 et seq.; SZYMOSZEK, Edward, *„Jurisdictio” w poglądach glosatorów* (*“Jurisdiction” as viewed by glossators*), Warsaw/Wrocław, 1976, p. 151.

¹⁹ ZIMMERMANN, Jan, *Polska jurysdykcja administracyjna* (Polish administrative jurisdiction), Warsaw, 1996, p. 5; JAKIMOWICZ, Wojciech, *„O „aktualności prawa” materialnego w mechanizmie stosowania prawa administracyjnego”* (*On the “up-to-dateness” of material law in the mechanism of applying administrative law*) [in:] *Aktualność pojęć prawa administracyjnego* (*The up-to-dateness of administrative law concepts*), eds. JAKIMOWICZ, Wojciech, Warsaw, 2021, p. 128.

²⁰ ZIMMERMANN, Marian, *Z rozważań nad postępowaniem jurysdykcyjnym i pojęciem strony w kodeksie postępowania administracyjnego* (*Considerations on jurisdictional proceedings and the concept of party in the Administrative Procedure Code*) [in:] *Księga pamiątkowa ku czci Kamila Stefki* (*A commemorative book in honor of Kamil Stefka*), Wrocław, 1967, p. 433 et seq.; ZIMMERMANN Jan, *Aksjomaty postępowania administracyjnego* (*Axioms of the administrative procedure*), Warsaw, 2017, p. 15.

²¹ *Słownik współczesnego języka polskiego* (*Dictionary of contemporary Polish*), eds. DUNAJ, Bogusław, Warsaw, 1996, p. 1049.

distinction also needs to be made between the procedural and substantive aspect of that term²².

In its substantive sense, a case means a set of factual and legal circumstances under which the competent authority applies the law with respect to identified individuals²³. However, note that civil cases are contentious by nature, which is extremely rare for administrative cases. Generally, public administration authorities apply the law in non-contentious situations, but an administrative decision can settle divergent interests, e.g. in cases regarding property delimitation²⁴. In such circumstances, public administration authorities act in a similar manner to general courts, and exercise jurisdiction *par excellence*. These cases do not require an administrative decision to be issued. Whenever their interests diverge, the parties may reach a settlement which shall then be approved by the public administration authority. For instance, before initiating the proceedings, land owners may enter into a written agreement regarding changes in water level on their land, if such changes do not have an adverse impact on other property or on water management. However, such agreement shall become enforceable only upon approval by means of a decision of the commune head or mayor²⁵. The approval is more a supervisory activity than a jurisdictional settlement, even though it is delivered by means of an administrative decision. In other situations, any activity that has an adverse impact on water levels or flows in adjacent properties (including farmland) shall be subject to proceedings under administrative jurisdiction²⁶.

Nevertheless, in its procedural sense, a case means a legally defined condition which is the subject of action (including investigative and jurisdictional measures) by the competent authority. A court, public administration authority or another body shall investigate the case and

²² ISERZON, Emanuel, “Uwagi o kryterium stosunku administracyjnoprawnego (Comments on the criterion used in classifying relations under administrative law)”, *Państwo i Prawo*, No. 11, (1965), p. 664 et seq.

²³ KIELKOWSKI, Tadeusz, *Sprawa administracyjna (Administrative case)*, Krakow, 2004, p. 35.

²⁴ See Article 30 et seq. of the Geodetic and Cartographical Law Act of May 17, 1989 (unified text: Journal of Laws [Dz.U.] of 2023, Item 1752, as amended).

²⁵ See Article 235 of the Water Act of July 20, 2017 (unified text: Journal of Laws [Dz.U.] of 2023, Item 1478, as amended).

²⁶ See Article 234 of the Water Act.

deliver a ruling within the applicable limits. Therefore, the case is the subject of a defined procedure.

In this context, note that cases under agricultural law do not form a separate subject of proceedings, and are not considered legally distinct. In the formal and legal sense, agricultural cases (including disputes under agricultural law) cannot be viewed as a separate category. Highly specific subjects of agricultural legal relations can be considered either as a civil or administrative case, and therefore be investigated under civil or administrative procedures.

Hence, an “individual case arising out of agricultural legal relations” is a conventional term which means highly specific subjects related to agricultural legal relations, i.e. agricultural disputes brought before jurisdiction.

4. PRINCIPLES FOR DETERMINING THE JUDICIAL AUTHORITIES HAVING COMPETENCE TO SETTLE INDIVIDUAL CASES UNDER AGRICULTURAL LAW

Although individual cases in Poland are settled through both judicial and administrative procedures, court jurisdiction and administrative jurisdiction are not competitive to each other, and no dispute may arise between general courts and public administration authorities as to which of them is competent to rule on a given case. As a fundamental principle, priority must be given to the judicial path, which means that administrative proceedings are acceptable insofar as they follow from specific provisions of statutory law which entitle public administration authorities to investigate and settle cases falling into a given category. Hence, public administration authorities do not have exclusive competence over individual cases, even if administrative in a material sense. *Jurisdicum* is therefore exercised by general courts, whereas public administration authorities operate only within the *imperium administratorum* that is unequivocally vested in them.

If these two paths are found to be equivalent, a dedicated public body must be in place to settle competence disputes between the executive and the judiciary (*Tribunal des conflits*).

Before World War 2, Poland had a Competence Tribunal in charge of settling competence disputes between administrative authorities and courts. Pursuant to the Act of January 31, 1980 on the Supreme Administrative Court and on amending the Act on the Administrative

Procedure Code²⁷, the Competence Bureau was appointed under the Supreme Court to rule on disputes between courts and administrative authorities. These were institutional forms of competence jurisdiction which decided whether courts should be directly or indirectly involved in the handling of an administrative case. The Competence Bureau of the Supreme Court remained active until January 1, 2004 which marked the entry into force of the Act of August 30, 2002—the Implementing Rules for the Act on the Administrative Court System and the Act on procedures before Administrative Courts²⁸.

On that day, priority was given to court procedures which is consistent with the currently applicable Constitution of the Republic of Poland²⁹. Pursuant to Article 177 thereof, general courts shall exercise judicial functions in all cases except those for which competence is given to other courts under respective Acts. It means that general courts have what is referred to as inclusive (collective, open, default) competence. In their relations with other courts (and, indirectly, with public administration authorities), they enjoy the presumption of competence for individual cases. Therefore, pursuant to Article 199¹ of the Civil Procedure Code Act³⁰ of November 17, 1964, the courts cannot reject a class action on the grounds that a public administration authority or an administrative court have the competence to investigate it, if the public administration authority or administrative court concerned found themselves not competent to do so. The above resonates with the provisions of Article 66, Section 4 of the Administrative Procedure Code³¹ of June 14, 1960 pursuant to which a public administration authority shall not refuse an application on the grounds that a general court is competent to examine it, if a general court found themselves not competent to do so.

Therefore, there is no need for the Competence Bureau of the Supreme Court to rule on disputes between administrative authorities and general

²⁷ Journal of Laws (Dz.U.) No. 4, Item 8, as amended.

²⁸ Journal of Laws (Dz.U.), No. 153, Item 1271.

²⁹ Constitution of the Republic of Poland of April 2, 1997 (Journal of Laws [Dz.U.] No. 78, Item 483, as amended).

³⁰ Unified text: Journal of Laws [Dz.U.] of 2023, Item 1550, as amended, hereinafter referred to as “APC.”

³¹ Unified text: Journal of Laws [Dz.U.] of 2023, Item 775, as amended, hereinafter referred to as “APC.”

courts³², which it did until the end of 2003. There is only need for issuing a decision on refusing an application on the grounds that court is competent to examine it by means of a verifiable secondary ruling³³. Nevertheless, a public administration authority shall not refuse an application on the grounds that a general court is competent to examine it, if a general court already found themselves not competent to do so³⁴.

Although individual cases in Poland are settled through both judicial and administrative procedures, court jurisdiction and administrative jurisdiction are not competitive to each other, and no dispute may arise between general courts and public administration authorities as to which of them is competent to rule on a given case. As a fundamental principle, the judicial path is the one to be followed, which means that administrative proceedings are acceptable insofar as they follow from specific provisions of statutory law which entitle specific authorities to investigate and settle cases falling into a given category. Hence, public administration authorities do not have exclusive competence over individual cases, even if administrative in a material sense. Another important aspect is that individual cases are presumed to be civil law cases, and therefore, as regards the judicial system, priority is given to civil courts.

Because of the two-track procedures for investigating and settling individual cases, the administrative jurisdiction may be viewed as opposed to judicial processes. Indeed, individual cases are usually brought either before courts or administrative authorities (setting aside arbitration procedures and civil mediation). As a rule, individual cases shall be brought before courts, which means that administrative jurisdiction overlaps with the collective competence of administrative authorities. It means that if none of the public authorities is vested with the capacity to resolve a specific individual case, it should be investigated by a court under the procedure applicable to civil law cases³⁵. Nevertheless, although

³² Section 5 of the Administrative Procedure Law Act of June 14, 1960, “Settling competence disputes between administrative authorities and general courts” was repealed by Article 4, Item 7 of the Act of August 30, 2002—the Implementing Rules for the Act on the Administrative Court System and the Act on procedures before Administrative Courts (Journal of Laws [Dz.U.] No. 153, Item 1271).

³³ See Article 66, Section 3 of the Administrative Procedure Code.

³⁴ See Article 66, Section 3 of the Administrative Procedure Code.

³⁵ DOBKOWSKI, Jarosław, *Z problematyki sądowej kontroli administracji publicznej i zapewnienia prawa do sądu w sprawach administracyjnych* (Selected issues related to judicial control over public administration and to ensuring the right to refer administrative cases to courts), [in:] *Kryzys, stagnacja, renesans? Prawo*

resolving civil law cases is the responsibility of general courts, a civil law case shall not be investigated under court proceedings if specific legislation identifies other authorities as having competence over it³⁶.

In substance, a civil case may be referred to administrative jurisdiction pursuant to an Act. Examples include cases related to determining the amount of compensation for hunting damages which are resolved under a procedure carried out by the forest district manager or the head of the Regional Directorate of the State Forests National Forest Holding³⁷; if the parties thereto reach a settlement, the procedure is no longer applicable.

The above considerations apply to individual cases under agricultural law. The courts competent to investigate them primarily include general civil courts, unless public administration authorities are found competent to resolve them pursuant to specific legislation. The above is true not only for disputes, but for any other cases³⁸.

5. COURT JURISDICTION IN INDIVIDUAL CASES UNDER AGRICULTURAL LAW

In Poland, general courts include district courts, regional courts, and courts of appeal³⁹. They exercise jurisdiction⁴⁰ and have the responsibility to investigate civil cases⁴¹. District courts are the first-instance authority who investigates any and all civil cases, except those falling under the jurisdiction of regional courts⁴². Essentially, the latter are competent to deal with cases related to property rights in which the amount in

administracyjne przyszłości. (Crisis, stagnation, renaissance? Administrative Law of the Future. Jubilee book by Professor Jacek Jagielski), eds. CHERKA, Maksymilian, GOŁASZEWSKI, Piotr, PIECHA Jacek, and WIERZBOWSKI Marek, Warsaw, 2021, p. 850 et seq.

³⁶ See Article 2, Sections 1 and 3 of the Civil Procedure Code.

³⁷ See Article 46 of the Hunting Act of October 13, 1995 (unified text: Journal of Laws [Dz. U.] of 2023, Item 1082).

³⁸ Cf. SPIRYDOWICZ, Edmund, *Ziemia i prawo (Land and law)*, Warsaw, 1977, p. 361 et seq.

³⁹ See Article 1, Section 1 of the Act on the General Court System of July 27, 2001 (unified text: Journal of Laws [Dz.U.] of 2023, Item 217, as amended).

⁴⁰ See Article 1, Section 2 of the Act on the General Court System.

⁴¹ See Article 2, Section 1 of the Civil Procedure Code.

⁴² See Article 16 of the Civil Procedure Code.

controversy is more than PLN 100,000 (ca. USD 25,000)⁴³. The key role of the courts of appeal is to act as a supervision instance.

The adjudicating court investigates the cases during a sitting. Generally, the hearing is open and public, unless a regulation exists which allows the submissions to be heard in closed session. A hearing and a closed session are the organizational forms of a court sitting⁴⁴.

The court shall deal with the cases during a trial (a contentious proceeding), unless a dedicated act provides for a non-contentious proceeding. A trial (a contentious proceeding) and a non-contentious proceeding are two different court procedures. A non-contentious proceeding does not involve a dispute; the plaintiff and the defendant are replaced by the applicant and the participants. Notable examples include cases related to farm succession, the keeping of mortgage registers, administration of co-ownership or use of agricultural property, administration of unclaimed successions, dissolution of co-ownership and division of succession, and primarily the acquisition of ownership of by usucaption.

Conversely, a trial is a contentious proceeding governed by the '*principe du contradictoire*' (the principle of contradictory interests) and the principle of free disposal of assets. In a trial, cases are dealt with in accordance with the provisions for ordinary trials or separate trials. A separate trial may relate to an individual case under agricultural law, e.g. infringement of possession or informalized procedures: proceedings by writ of payment, proceedings by order of payment, and summary procedures.

Unlike Germany, Poland has no separate regulations for court proceedings related to agricultural cases (such as *Verfahrensordnung für Höfesachen, HöfeVfO*) and courts vested with competence to deal therewith (such as the *Landwirtschaftsgericht*).

In practice, in cases under agricultural law, a major role is played by non-contentious proceedings, especially in the area of property law and succession law.

5. ARBITRATION IN INDIVIDUAL CASES UNDER AGRICULTURAL LAW

In Poland, the parties may refer their dispute to a court of arbitration, unless prohibited by specific regulations. However, no such prohibitions

⁴³ See Article 17 of the Civil Procedure Code.

⁴⁴ See Article 148 of the Civil Procedure Code.

apply to individual cases under agricultural law. In order to refer their dispute to a court of arbitration, the parties are required to enter into an agreement which specifies the subject matter of the dispute or the legal relation which gave, or may give, rise thereto. The above is referred to as the arbitration clause. It may specify a permanent court of arbitration as having competence to rule on the dispute concerned⁴⁵.

As regards individual cases under agricultural law, these may include the Agricultural Chambers' courts of arbitration specialized in cases relating to hunting damages, and the court of arbitration of the Polish Chamber of Commerce for Agricultural Machinery and Equipment. Also, the arbitrators may be appointed on an ad-hoc basis.

Note that an arbitration court delivers verdicts as per the law applicable to the relation concerned or—if the parties failed to explicitly authorize it to do so—in accordance with the general principles of law or the principle of equity. However, whatever the circumstances may be, the court of arbitration shall take into consideration the provisions of the agreement and the customary procedures applicable to the legal condition in question. The court of arbitration shall deliver a verdict, unless a settlement is reached by the parties.

Although they are the best reflection of the nature of relations in agriculture, the courts of arbitration are not frequently relied upon in settling or resolving disputes between farmers or larger agricultural producers.

6. ADMINISTRATIVE JURISDICTION IN INDIVIDUAL CASES UNDER AGRICULTURAL LAW

Note that individual cases under agricultural law may become subject to administrative proceedings insofar as public administration authorities are entitled to deal therewith by means of administrative decisions. Public administration authorities must be vested with special competence in that respect.

While the jurisdictional administrative procedure is regulated under multiple legal acts, a major role is played by the Administrative Procedure Code which lays down the provisions for what is referred to as the general procedure, i.e. a common procedure for delivering administrative decisions. That procedure acts as a principle with respect to specific procedures governed by different regulations (which are considered as

⁴⁵ See Article 1154 of the Civil Procedure Code.

exceptions). There are no separate procedures for cases under agricultural law that would take their particularities into account. In turn, these particularities provide grounds for a small number of amendments to principles laid down in the Administrative Procedure Code⁴⁶.

Usually, local administration authorities are competent to deal with such cases. This means commune-level authorities (e.g. when it comes to property division, farm damages caused by natural disasters, agricultural censuses, issuing permits for the cultivation of poppies and hemp) and district-level authorities (e.g. consolidation and conversion of land, converting agricultural land to non-agricultural uses, rehabilitation of devastated and degraded land) or, in rare cases, central and local (voivodeship-level) government authorities. In turn, the ministers act as supervisory authorities who validate the decisions of lower-level bodies under dedicated procedures.

Jurisdiction is also exercised by heads of different government agencies and managers of their field units, including without limitation the President of the Agency Restructuring and Modernization of Agriculture, the directors of regional offices and district office managers⁴⁷.

Sometimes, the right to exercise jurisdiction is also vested in social organizations, namely the farmers' self-government institutions (agricultural chambers)⁴⁸.

At the lowest level, commune authorities may transfer their competences to executive bodies of auxiliary units, i.e. village leaders whose authority extends over one or several villages⁴⁹.

It is also worth noting that the right to be heard in court is guaranteed in the Constitution of the Republic of Poland also with respect to cases subject to administrative jurisdiction. Administrative decisions may be inspected both by general courts which are entitled to take over a case in order to investigate and settle it by themselves, and by administrative

⁴⁶ See Article 10 of the Act of May 9, 2008 on the Agency for Restructuring and Modernization of Agriculture (unified text: Journal of Laws [Dz.U.] of 2023, Item 1199, as amended).

⁴⁷ See Article 10 of the Act on the Agency for Restructuring and Modernization of Agriculture.

⁴⁸ See Article 6 of the Agricultural Chambers Act of December 14, 1995 (unified text: Journal of Laws [Dz.U.] of 2022, Item 183, as amended).

⁴⁹ See Article 39, Para. 4 of the Commune-Level Local Government Act of March 8, 1990 (unified text: Journal of Laws [Dz.U.] of 2023, Item 40, as amended).

courts which, however, only inspect the legal validity of the decision without assessing its soundness and the rationale behind it.

In Poland, administrative courts may provide a statement regarding the substance of the case only to a limited extent. Nevertheless, they enjoy a certain (yet narrow) scope of competence⁵⁰. They can do so only by examining the complaints against the decisions of public administration authorities. Similarly, general courts vested with “full jurisdiction” can in certain specific circumstances do nothing more than annul a decision of a public administration authority and submit the case for reexamination to that very authority⁵¹.

7. QUASI-JUDICIAL AUTHORITIES APPOINTED TO RULE ON INDIVIDUAL CASES UNDER AGRICULTURAL LAW

As regards cases under agricultural law at local government level, an authority comprising of professionals in areas not necessarily related to law and administration may act as an appeal body⁵². They are referred to as self-government appeal courts which do not only act as a supervision instance but have the autonomy to issue verdicts in many cases under agricultural law. They are organized in panels, and enjoy a large degree of independence. They are similar in nature to Western European administrative tribunals.

Other examples include property delimitation activities performed by land surveyors duly authorized by the commune head or mayor. A settlement reached by the parties before the land surveyor has the effect of a court settlement. Otherwise, the land surveyor’s opinion and technical report provide a basis for delimitation by means of a decision, or for annulling the procedure and referring the case to a court due to property boundaries being contentious⁵³.

If the procedure for the consolidation and conversion of land involves a larger group of participants thereto, a council of participants is appointed in order to prevent any disputes that may arise thereout. However,

⁵⁰ Cf. Article 145, Section 3 of the Act on procedures before Administrative Courts of August 30, 2002 (unified text: Journal of Laws [Dz.U.] of 2023, Item 1634, as amended).

⁵¹ See Article 477¹⁴, Section 2¹ of the Civil Procedure Code.

⁵² See Article 7, Para. 1 and 1a of the Act on self-government appeal courts of October 12, 1994 (unified text: Journal of Laws [Dz. U.] of 2018, item 570).

⁵³ See Article 31 et seq. of the Geodetic and Cartographical Law Act.

ultimately, the decision on approving the draft concept of land consolidation and conversion is delivered *ex officio*⁵⁴.

8. JOINT JURISDICTION IN INDIVIDUAL CASES UNDER AGRICULTURAL LAW

Sometimes, in accordance with the applicable regulations, a party may develop a plan, program or project by themselves or together with a professional (e.g. an engineer practicing a liberal profession or a holder of specialized professional certifications). Then, a public administration authority only approves it by means of a decision which incorporates the plan, program or project as an appendix thereto. Thus, the competence of the authority consists in it being specifically entitled to exercise preventive supervision. In such cases, the parties become involved in the last stage of the administrative procedure, i.e. the formulation of the settlement. In each scenario, the interested parties themselves prepare the documentation required under the law. The public administration authority inspects it in legal terms, and approves it (makes it legally binding) with a view to make it ready for use in legal procedures. Also, the public administration authority remains bound by the that plan, program or project in the sense that it may not interfere with the substance thereof, which has a direct impact on the subject and scope of the settlement. As a matter of fact, the applicant sets out the wording of the future decision, whereas the authority delivers its decision thereon which may be either an approval or a rejection. Generally, a building permit is required in order to erect farm buildings. It approves not only the commencement of construction works, but also the construction plans⁵⁵. Sometimes, the investment process is preceded by a division or merger and a subsequent reparcelling of property. It is subject to a procedure which consists in approving the relevant map together with the construction plan⁵⁶.

Joint jurisdiction can also take another form. As mentioned earlier, Polish water management regulations allow land owners to enter into a written agreement regarding changes in water level on their land, if such

⁵⁴ See Article 9 et seq. of the Land Consolidation and Conversion Act of March 26, 1982 (unified text: Journal of Laws [Dz. U.] of 2023, Item 1197).

⁵⁵ See Article 34, Para. 4 of the Construction Law Act of July 4, 1994 (unified text: Journal of Laws [Dz.U.] of 2023, Item 682, as amended).

⁵⁶ See Article 96, Para. 1 and Article 98b of the Property Administration Act of August 21, 1997 (unified text: Journal of Laws [Dz.U.] of 2023, item 344, as amended).

changes do not have an adverse impact on other property or on water management. Such agreement shall become enforceable upon approval by means of a decision of the commune head or mayor. The approval shall be applied for by the land owners concerned. A non-approved agreement is unenforceable. The agreement is performed on a voluntary basis or, where impossible, follows the procedure set forth in the Administrative Enforcement Proceedings Act, which is characteristic of compulsory administrative proceedings.

Rather than being fully subject to administrative jurisdiction, such cases are dealt with under a procedure in which the burden of preparing the draft ruling is essentially on those directly concerned⁵⁷.

SUMMARY

The Polish legal system is not only deprived of agricultural courts but also lacks homogeneous agrarian jurisdiction. Hence, individual cases (including disputes) under agricultural law have been assigned to both general courts and public administration authorities. However, the structure of general courts does not include dedicated organizational units. This is only the case in the official system of public administration. Furthermore, the judges do not specialize in agricultural law; only a few agricultural topics are mentioned as part of the judge training program (during civil law courses). In view of the required levels of professionalism and expertise, many individual cases are resolved through public administration procedures which involve the participation of the interested parties themselves and their organizations. It is fair to speak of an expansion of public administration authorities; however, in certain cases under agricultural law, the judicial functions are transferred from public administration to the courts. As a consequence, no homogenous trend can be identified.

Hence, the system's components differ in qualitative and quantitative terms. The system is certainly not homogeneous, and the tools initially designed on an ad-hoc basis are now used as a permanent solution. As a consequence, an important and expanded sector of the economy does not

⁵⁷ DOBKOWSKI, Jarosław, *Kojurysdykcja w rozstrzygnięciu wybranych spraw indywidualnych z zakresu publicznego prawa rzeczowego (Joint jurisdiction in the settlement of selected individual cases under public material law)*, [in:] *Przestrzeń i nieruchomości jako przedmiot prawa administracyjnego (Space and property as a subject of administrative law)*, eds. NIŻNIK-DOBOSZ Iwona, Warsaw, 2011, p. 441 et seq.

have its own jurisdiction to deal with agricultural cases. Settling the disputes between agricultural producers, processors and agri-food traders is the responsibility of both general courts and general authorities of public administration. Measures taken by these bodies are based on general regulations rather than on specific provisions for agricultural and related activities. This is because there are no specific procedures that would take the particularities of agricultural cases into account. In turn, these particularities provide grounds for a small number of amendments to general principles which, however, do not result in any important derogations, diversions or deviations therefrom.

The above perpetuates the historical assumption that cases under agricultural law should be dealt with at the lowest possible level, and should preferably involve an active participation of the interested parties themselves and the rural population (or their representatives). The principle of subsidiarity that applies to these cases is expressed by the words that went mainstream because of the title of a 1849 theatrical play: “We shall not refer this to the commune head⁵⁸.” This expression also reflects the concept of shifting the burden to public administration authorities. When looking at it from above, it is fair to say that Poland faces a number of legal complexities and an accumulation of legal regulations.

In Poland, agricultural jurisdiction is not only heterogeneous in terms of deciding authorities and procedures in place, but primarily lacks a common subject of actions to be dealt with. Moreover, the boundaries of jurisdiction are blurred. A case under agricultural law is a conventional rather than a legal term; as regards both substance and procedure, it is classified as civil or administrative matters. The above seems to be a starting point which should provide a basis for the codification of agricultural law or—if unfeasible under certain conditions—for compiling the relevant regulations into a dedicated act (“General Regulations of Agricultural Law”) whose regulatory scope would correspond to the subject matter of that area of law. Should that happen, a case under agricultural law (or, in broader terms, an agricultural case) would be anchored in legal standards. In such a scenario, the decision whether a case falling under these regulations qualifies for settlement under judicial or administrative proceedings would only be a formal matter. The above would be an important step towards establishing a separate jurisdictional system, or even for appointing highly specialized quasi-judicial authorities

⁵⁸ A comedy by Aleksander Ostrowski.

vested with jurisdictional independence and autonomy, i.e. agricultural tribunals.

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