XXX European Congress of Agricultural Law
18-21 September 2019, Poznań (Poland)

Commission I

FOOD SOVEREIGNITY AND FOOD SECURITY: CONCEPTS AND LEGAL FRAMEWORK

POLISH REPORT*, edited by M. Korzycka, prof. dr hab. and P. Wojciechowski, dr . hab.*
AUTHORS: **Małgorzata Korzycka, Patryk Kalinowski, Monika Łata, Łukasz Sokołowski, Paweł Wojciechowski, Monika Żuchowska-Grzywacz**

The Polish law does not provide a definition of food security nor of food sovereignty. Food security is an ambiguous concept. In broadest terms, it can be defined as all the conditions that must be met in order to ensure a sufficient amount of food to feed the population of the world, of a given region or a given state. It applies both to the production of food and its availability. In short, then, it may be said that food security means ensuring availability and stability of food supplies[1]. Food sovereignty, in turn, means above all the right of people and countries to autonomously define their agricultural and food policies that will satisfy their needs and allow them to accomplish their goals of sustainable development without detriment to third countries.

The Polish constitution does not directly address the need to ensure food security or food sovereignty. This obligation, however, can be indirectly deduced from the provision that states that the foundation of the agricultural system in Poland is the family farming holding. References to these terms, especially to the concept of food security, can be found in acts of law of lower levels.

The term "food security" is present in the currently binding Act on the Agricultural System (AAS), which explicitly states that instruments meant to limit the trade of farmland have been implemented with a view of ensuring food security for the people of Poland. References to food security can also be found in the Act of 9 November 2018, on the amendmentsof certain acts with a view of facilitating the sale of food by farmers to stores and restaurants, as well as in the Draft Act on the use of high-protein plants in feed and in the Draft Act on the use of farming estates for conducting non-agricultural business activities. Moreover, food security is mentioned increasingly often in judicial decisions and in some bilateral agreements concluded between Poland and other countries.

"Food sovereignty", in turn, comes up only in soft law documents, for example in the "Priorities of the Ministry of Agriculture and Rural Development for the Years 2018-1019 Within the Aspect of the Action Plan of the Ministry of Agriculture and Rural Development for the Years 2015-2019 and of the Pact for Rural Areas for the Years 2017-2010 (2030)". It does not, however, explain how food sovereignty is to be understood. It only states that the completion of tasks resulting from the Action Plan of the Ministry of Agriculture and Rural Development for the years 2015-2019 is to ensure food safety and food sovereignty of Poles.

[1] L. Costato, *Principles and rules of European Food Law* (in:) L. Costato, F. Albisinni, *European Food Law*, Seggiano di Pioltello 2012, p. 2.

The term "food sovereignty" is virtually absent from judicial decisions issued by Polish courts as well.

It must be stated, however, that just like in the case of "right to food", which has not been directly implemented by the legislator into the legal order, but for whose achievement systemic solutions have been created[2], over the past few years we have seen the Polish legislators take up steps that may lead to ensuring food safety and food sovereignty.

The Polish legislator is increasingly aware of the need to ensure food safety and of the associated necessity to provide special protection to agricultural activities. Owing to the foregoing, the Polish law has recently introduced a number of legal solutions to further the accomplishment of these goals.

The following part discusses changes in legal provisions either introduced in the recent times or planned for implementation, as well as judicial decisions and selected international agreements which make references to food safety.

1) Easier access to farming land for farmers (Małgorzata Korzycka, prof. dr hab., Paweł Wojciechowski, dr hab., Faculty of Law and Administration, University of Warsaw)

Agricultural real property, especially in countries where land is relatively cheap, have become the focus on interest of all kinds of investors, not necessarily interested in agricultural production and usually originating from richer countries. This phenomenon is often referred to as "land grabbing"[3]. It is caused by a number of factors, such as, among others, global increase of food prices, promoting renewable energy (biomass, wind farms, etc.), high capital return rates (land has become a relatively safe and attractive asset for investors and speculators), shrinking water resources in the world, growing global population[4]. This phenomenon is also noticeable in EU member states (especially in the new ones, where real estate prices are significantly lower[5]), and an additional incentive for investors to take interest in agricultural land is provided by the system of direct payments connected to holding farmland[6].

The special character of agricultural land is emphasized by EU institutions[7] and by the United Nations Organization[8]. EU documents stress, among other things, the key importance of

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[2] M. Korzycka-Iwanow, *Prawo żywnościowe. Zarys prawa polskiego i wspólnotowego* [Food Law. An Outline of Polish and Community Law], Warsaw 2007, p. 86.

[3] See A. Zawojska, "Zjawisko zagrabiania ziemi w kontekście praw własności" [Land Grabbing within the Context of Ownership Rights], *Prace Naukowe Uniwersytetu Ekonomicznego we Wrocławiu*, no. 361 • 2014, p. 270. A lot has been written about the phenomenon of land grabbing, including, among others, a document commissioned by the European Parliament's Committee on Agriculture and Rural Development, entitled "Extent of Farmland Grabbing in the EU". European Parliament (2015). "http://www.europarl.europa.eu/RegData/etudes/STUD/2015/540369/ IPOL_STU%282015%29540369_EN.pdf

[4] See A. Zawojska, "Zjawisko zagrabiania ziemi w kontekście praw własności" , *Prace Naukowe Uniwersytetu Ekonomicznego we Wrocławiu*, no. 361 • 2014, p. 271, P. Wojciechowski, *Pojęcie nieruchomości rolnej* [The Concept of Agricultural Real Property], [in:] *Instytucje prawa rolnego* [Institutitions of Agricultural Law], (ed.) M. Korzycka, Warsaw 2018, p. 146.

[5] In 2015 the average prices of 1 ha of farmland in old EU member states were, for example: in the Netherlands EUR 55,500, in Belgium EUR 33,300, in Denmark EUR 23,417, in Germany - old lands: EUR 29,911 and in new lands: EUR 14,197, Italy EUR 19,854. In new EU member states, for example: in Poland EUR 9,200, in Romania and in Slovakia EUR 4,500, in Bulgaria EUR 3,742, in Hungary EUR 3,300, in Latvia EUR 2,500. See: A. Sikorska (ed.), *Analizy rynkowe. Rynek ziemi rolniczej stan i perspektywy* [Market Analyses. The Farmland Market. Current State and Perspectives], December 2016, p. 54.

[6] See: P. Wojciechowski, *Pojęcie nieruchomości rolnej…*, p. 146.

[7] See: Commission Interpretative Communication on the Acquisition of Farmland and European Union Law (OJ C 350 of 18.10.201, p. 5), Report on the state of play of farmland concentration in the EU: how to facilitate the

farmland for food security, especially considering that it is a limited resource and in nearly half of EU territory it is exposed to pressure in connection with non-agricultural use[9]. Moreover, the excessive concentration of land has been identified as a negative phenomenon[10]. It has also been stressed that while land is on the one hand property, on the other hand it is a public asset, and is subject to social obligations[11]. Similarly, FAO stresses the crucial importance of land for the achievement of human rights, food security, poverty eradication, sustainable livelihoods, social stability, housing security, rural development and socio-economic development objectives[12].
In the vast majority of European Union Member States there are legal regulations limiting the trade in agricultural real estate. Therefore, establishing such laws is not only a phenomenon occurring in the countries of the "new Union", but, in recent years, it is precisely in these countries that laws have been introduced with a view of providing special protection of agricultural land. This was connected with the expiry of transitional periods provided for in the accession treaties, which allowed, among others, derogations from the principle of free movement of capital in relation to the acquisition of agricultural real estate. For example, Bulgaria and Romania had a transitional period until 1 January 2014, Lithuania, Latvia, Hungary and Slovakia until 1 May 2014 and Poland until 1 May 2016. Currently, the only country with a transitional period is Croatia, whose derogation will expire in 2020, and it has the right to apply for an extension of 3 years. Research indicates that Poles treat agricultural real estate as a beneficial and tax-free investment of capital, and that for farmers it is also an asset that can generate a steady income (e.g. rent from lease, EU funds), which discourages owners from selling and increases the price[13].

In Poland significant changes have been introduced to the Act on the Agricultural System (hereinafter: "AAS"), which are to contribute to acquisition of farming land in Poland exclusively by active farmers running family farming holdings (which raises food safety). These amendments have been introduced by way of the Act of 14 April 2014 on Suspending the Sale of Real Properties Included in the Agricultural Property Stock of the State Treasury and Amending Some Other Acts, which took effect on 30 April 2016. The introduction of these changes was met with significant criticism on the part of the doctrine and of the practitioners, which is why a new amendment of the AAS was drafted (Act of 26 April 2019 on the Amendment of the Act on Agricultural System and Certain Other Acts), which entered into force on 25 June 2019.

Firstly, it should be noted that the AAS which took effect in 2003, prior to its amendment, furthered the acquisition of agricultural land property by farmers to a very limited extent, because the sole instrument that could have contributed to the accomplishment of this objective was the old Act's provision on pre-emptive right of the Agricultural Property Agency (APA), acting on behalf of the State Treasury (and, analogically to the pre-emptive

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access to land for farmers? (2016/2141(INI); Opinion of the European Economic and Social Committee of 21 January 2015 entitled 'Land grabbing – a wake-up call for Europe and an imminent threat to family farming' (opinion issued at own initiative).

[8] Voluntary Guidelines on the Responsible Governance of Tenure of Land, Fisheries and Forests in the Context of National Food Security, http://www.fao.org/docrep/016/i2801e/i2801e.pdf accessed on 25 July 2018.

[9] See: Commission Interpretative Communication on the Acquisition... p. 5

[10] In 2013, in the 27-member EU, only 3.1 % of farms controlled 52.2 % of farmland in Europe, and whereas, by contrast, in 2013, 76.2 % of farms had the use of only 11.2 % of the agricultural land. See: Commission Interpretative Communication on the Acquisition... point A.

[11] See: Commission Interpretative Communication on the Acquisition… point G.

[12] See: Voluntary Guidelines on the Responsible Governance…, p.6

[13] S. Prokurat, *Ekonomiczne…, op.cit.*, p. 143.

right, the right to acquisition in the event of transfer of ownership of agricultural property based on contracts other than sale contracts). APA could sell farmland acquired according to this procedure in limited tenders, solely to individual farmers. The absence of adequate instruments led to the purchase of farming land in Poland by entities who were not interested in running an agricultural activity, often with the purpose of capital investment, or by entities running the largest farming holdings, which resulted in the increase of prices of agricultural real property and in the concentration of farming land in the hands of the wealthiest entities. This situation led to considerable amendments in the AAS. The key definitions of the Act have remained unchanged, such as the definition of an agricultural real property, family farming holding or individual farmer.

The key change introduced in 2016 is that farmland may only be acquired in Poland by individual farmers, that is natural persons with qualifications specified in the AAS, who have been running a family farming holding of no more than 300 hectares for at least 5 years and residing throughout this time within the territory of the commune in which at least one real property forming part of the farming holding is located. A number of exceptions from these rules have been provided for, which may be divided into exceptions resulting directly from the Act (statutory exceptions) and exceptions resulting from having obtained an individual permit (individual exceptions). Statutory exceptions may be divided into three categories: subjective (when the act stipulates types of entities other than an individual farmer who are entitled to acquire an agricultural real property), circumstantial (when the act stipulates circumstances in which a person other than an individual farmer may acquire the property) and area-related. Under the act itself, apart from individual farmers, agricultural real estate could be acquired without any restrictions (subjective exceptions) by: relatives and kin of the seller (i.e. spouse, ascendants, descendants, siblings and children of siblings, adoptive parents and adoptive children, and as of 2019 also siblings of parents and of stepchildren), local government units, the State Treasury, legal personalities of churches and religious associations registered in Poland, national parks. As of 2019 this catalogue also includes commercial law companies, whose sole shareholder is the State Treasury, and which carry out public objectives specified in the Act. Moreover, the possibility of acquiring agricultural real estate was allowed in the following situations (circumstantial exceptions): as a result of inheritance (the heir does not have to be a relative or kin of the seller), in the case of using the claim for transfer of real estate ownership to a person who inadvertently crossed the boundary of the real estate when erecting a building (the so-called neighbouring law), and in the course of restructuring proceedings (in the case of bankruptcy of the entity). In 2019, several further exceptions have been added to this catalogue, such as situations where different specific provisions provide for the possibility to sell agricultural real estate for a specific purpose (e.g. in connection with the acquisition of pension rights, in connection with the destruction of a specific land by a third party), where the acquisition takes place as a result of the abolition of co-ownership, of division of joint property following divorce, of division of the estate, or as a result of the division, transformation or merger of companies under commercial law.

The 2019 amendment introduced a third type of statutory exception to the rule that only an individual farmer may acquire agricultural real estate. It is an exception related to the area of purchased agricultural real estate. Namely, agricultural real estate with an area of less than 1 ha may be purchased in Poland by any person, regardless of the subjective criteria and the manner of acquisition, but this does not mean full freedom of trade. A person acquiring even such a small agricultural real estate is obliged to conduct agricultural activity on it. However, agricultural real estate with an area of less than 0.3 ha, which may be purchased in Poland and used without any limitations, remains completely beyond the scope of the AAS regulations.

The extension of the scope of exceptions, and in particular the introduction of the area exception, of the exceptions related to the abolition of joint ownership and the exceptions

related to the transformation of companies, have made the trade in agricultural real estate in Poland much less limited as of 2019, and at the same time, given the nature of the added exceptions, these changes do not adversely affect the level of food security in Poland.

An agricultural real property larger than 1 ha may be acquired also by a person who is not an individual farmer nor covered by any of the foregoing exceptions, on the basis of a relevant decision of a General Director of the National Centre for Agriculture Support (NCAS, formerly APA) (acting as an organ of state administration), issued at the application of the seller or of the buyer, thus in this case we may speak of individual exceptions. The premises for the issuing of a decision permitting the acquisition have been specified in the AAS.
Starting from 2019, permit for the sale of real estate at the request of the seller is given in a situation where the seller proves that it was not possible to sell agricultural real estate to an individual farmer (and the Act precisely specifies the circumstances which allow to conclude that it was not possible to sell real estate), provided that the buyer undertakes to conduct personal agricultural activity, and as a result of the purchase there will be no excessive concentration of agricultural land. In this respect, in 2019 there was a quite significant and beneficial change in comparison to the previous legal status, where the prerequisites for granting permit were the lack of possibility to purchase (which was an extremely broad concept, including also gratuitous transactions, and not only sales as is currently the case) and it was required that the purchaser should give a guarantee of proper agricultural activity (which was very difficult to judge).
The second individual exception regards situations where the buyer applies for a permit to acquire agricultural real property. In this case, the permit application may be lodged exclusively by a natural person, and the permit is issued if the applicant intends to establish a family farming holding, has agricultural qualifications (or is in the course of obtaining them), undertakes to run a personal agricultural activity (while prior to 2019, a guarantee of proper running of an agricultural business was required), and undertakes to reside, throughout 5 years from the date of real property acquisition, within the territory of the commune in which at least one agricultural property to form part of the future farming holding is located. The 2019 amendment clarifies directly in the Act what should be included in an application and unambiguously states which entities are parties to administrative proceedings in matters concerning the issuance of a permit to purchase agricultural real estate, which undoubtedly increases the transparency of provisions.
It should be emphasized that if the permit is not issued, the NCAS is obliged to acquire such agricultural real property on behalf of the State Treasury, against remuneration equivalent to the market value. The implemented solutions impede the acquisition of farming land in Poland for purposes other than running an agricultural enterprise (only the statutory exceptions provide such possibility). What is more, the acquirer of the agricultural real property (besides the statutory exceptions), is obliged to run the farming holding whose part is the acquired agricultural real property for a period of at least 5 years from the acquisition of this real property, and in the case of natural persons - to run it personally. It should be stressed that there has been a significant relaxation of the provisions here, as before the amendment of 2019 the requirement of running the agricultural holding personally covered a period of 10 years.
If the acquirer of farmland has not undertaken, or ceased to run an agricultural activity within a period of 5 years from the acquisition, and in the event of a natural person - if this activity is not run personally on the agricultural property forming part of the farming holding, the court, at the application of NCAS, rules on the acquisition of ownership of this real property by NCAS acting on behalf of the State Treasury against remuneration equivalent to the market

value established pursuant to the provisions on real estate management, unless important economic, social or unforeseen events impede this.
It should be emphasized that the very concept of "acquisition of real estate" has had a very broad meaning since 2016, as it does not refer exclusively to civil law transactions (contracts), but also includes the transfer of ownership of agricultural real estate or the purchase of agricultural real estate also as a result of a court decision or a decision issued by another public administration authority, as well as other legal events (e.g. acquisition by usucaption).
Another far-reaching change, implemented in 2016, was the introduction of a statutory right of pre-emptive purchase of shares and stock in commercial partnerships and companies that own agricultural property for the NCAS, acting on behalf of the State Treasury. This solution has been implemented with the objective of eliminating the practice whereas the object of trade, mainly for speculative purposes, were shares in companies that owned agricultural real property, which made it possible to circumvent the APA's (now NCAS') right of pre-emption in trading agricultural real property. There existed a serious risk that the introduction of the aforementioned restrictions in the trade of agricultural real property could contribute to the rise of this indirect instrument of agricultural real property trade (that is trade in shares of companies that owned these agricultural lands), thus the legislator has decided to introduce this significant entitlement for the NCAS. Unfortunately, the provisions implementing the right of pre-emptive purchase of shares and stock have been formulated in such a manner that they apply not only to companies established with the purpose of trading agricultural real property, but also to companies that are owners of agricultural land in Poland, which seems to be an excessive solution. The 2019 amendment changed these provisions by restricting this right of pre-emption to situations in which the company owns an agricultural real property with an area of at least 5 ha, or a number of agricultural real properties with a total area of at least 5 ha.
The solutions adopted by the Polish legislator in 2016 considerably restricted the trade of agricultural real estate, but they were a response to the phenomenon of concentration of agricultural land and speculative acquisition of real property by entities that are not interested in running an agricultural activity. However, the practice of applying the regulations introduced in 2016 has shown that in many cases the adopted restrictions are excessively restrictive and not necessary for the intended purpose. This led to the amendment of the Act in 2019.
As a result of the provisions adopted in 2019, the scope of restrictions in trading real estate is both more transparent and less extensive, but at the same time control over trade is ensured to a sufficient extent to safeguard food security by limiting speculative acquisition of agricultural real property.
However, the binding regulations still raise doubts as to their compliance with the principle of free movement of capital (e.g. the requirement of running the agricultural activity personally or the requirement of residence in a specific commune). The adopted solutions still do not provide instruments to protect a farming holding as an organized whole directed at running an agricultural activity. For example, they do not lay down any restrictions to excessive fragmentation of farming holdings, and such fragmentation poses a serious problem in Poland. Thus, it would still be recommendable for the Polish legislator to undertake steps that would further the development of farming holdings more effectively, as the basic production units in the agricultural economy, without stopping short at only protecting the farming land, which, albeit the fundamental production factor, is not the sole one.

2) Easier disposal of agricultural products by farmers (Małgorzata Korzycka, prof. dr hab., Paweł Wojciechowski, dr hab., Faculty of Law and Administration, University of Warsaw)

The Polish law has introduced solutions to facilitate the disposal of agricultural products by farmers, for example by expanding the extent to which they may run small-scale processing activities within their farming holdings. On 1 January 2017, the Act of 16 November 2016 on the amendment of certain acts in order to facilitate the sale of food by farmers took effect (Journal of Laws, item 1961). Besides the direct sale of agricultural products, which had already been regulated, it introduced a new category of agricultural activity, that is "agricultural retail".
However, solutions concerning agricultural retail trade were quite quickly significantly modified by the Act of 9 November 2018 amending certain acts in order to facilitate the sale of food by farmers to shops and restaurants and by the Act of 4 October 2018 amending the Act on products of animal origin and the Act on food and nutrition safety.

First of all, the definition of agricultural retail trade provided by the Act on food and nutrition safety has been extended. According to this definition, agricultural retail trade means retail trade within the meaning of Article 3(7) of Regulation No 178/2002, consisting in the production of food coming in whole or in part from own cultivation, breeding or rearing of an entity operating on the food market and selling such food: a) to the final consumer referred to in Article 3(18) of Regulation No 178/2002, or - which constitutes a new solution - b) to establishments conducting retail trade intended for the final consumer.
From this definition it follows unanimously that agricultural retail is not limited to primary food (i.e. primary, non-processed agricultural products). Thus, the introduced category of agricultural activity is not the same thing as direct supply, which is performed by the producer, of small quantities of primary products (i.e. non-processed agricultural products) to the final consumer or to a local retail establishment supplying the final consumer, specified in EU regulations (Art. 1 par. 2 point 3 of the Regulation no. 852/2004 and Art. 1 par. 3 letter c of the Regulation no. 853/2004).
The Act on food and nutrition safety, besides the definition, specified also the rules for running agricultural retail. Firstly, the production and sale of food within agricultural retail may not pose a hazard to food safety nor impact negatively the protection of public health, and it is subject to the supervision of the organs of official food control. The quantities of food must be adjusted to the needs of the consumers, and the executive regulation to the Act specifies maximum quantities of various types of food (both primary and processed) which may be sold within agricultural retail, as well as the methods for its documentation.
Also requirements concerning sale of food as part of agricultural retail, where produce is sold by retailers to end customers, have been determined (among others, the territorial scope has been reduced, the obligation to document sales has been introduced). The sale may not take place via intermediaries, with the exception of sale at exhibitions, fairs and similar events, organized to promote food, provided that the intermediary is also selling food produced by themselves under agricultural retail, or that the intermediary runs agricultural retail in the same poviat.
Changes have also been introduced to tax provisions. The instruments introduced in these provisions are to act as an incentive for farmers to take up agricultural retail. Pursuant to the amendments in effect since 2018, revenues from agricultural retail up to PLN 40 000 annually (before this amount was PLN 20 000 annually) are exempt from income tax, provided that they originate from the sale of products in quantities not exceeding those allowed by the relevant provision. In order to be granted the exemption, it is additionally necessary to meet

some other criteria. Namely, a farmer will be eligible for the exemption if at least 50% of a given product are raw materials from own cultivation, breeding or raising, processing involves non-industrial methods and the activity does not entail employment of workers based on work contract, contract of mandate, specific work contract or similar. Moreover, annual revenues in excess of PLN 40 000 may be taxed at more favourable conditions (tax on registered income without deductible costs).
The introduced changes certainly act as an incentive, especially for owners of smaller farming holdings, to take up not only production, but also processing on a small scale, which will contribute to improvement of the economic situation of small-scale farmers (who, besides primary products, will also be able to offer processed products without having to pay income tax on them). At the same time, it will positively influence the market of food products, giving consumers access to a greater spectrum of goods made without the use of industrial methods.

3) Preventing food waste (Ł. Sokołowski, Ph.D., Faculty of Law and Administration of the Adam Mickiewicz University in Poznań)

Another initiative, taken up in the recent years, which affects both food safety and food sovereignty, is the attempt to regulate the issue of preventing food waste. Currently, there are no provisions in place in Poland imposing any obligations in this respect neither onto food business operators nor onto any other participants in the food supply chain. The only facilitation have been the changes of tax provisions, which in reality do not constitute support systems, but do away with the excessive and disproportionate restrictions that existed before. Since 1 January 2009, food donations made by producers, with the exception of alcoholic drinks with alcohol content over 1.2% and beverages that are mixtures of beer and non-alcoholic drinks with alcohol content of over 0.5%, have been tax exempt, provided they are donated to public benefit organizations[14] and destined for charitable purposes of this organization. As of 1 October 2013, the foregoing exemption has also been extended to include food distributors. Currently, it applies to all taxpayers who make such donations.

The draft act applies exclusively to the distribution sector and it lays down the duties of food sellers with a view of countering food waste. They are, however, to apply solely to food business operators that sell foodstuffs at retail and wholesale units with a sales area of over 250 m2, where revenues from the sale of foodstuffs accounts for at least 50% of all revenue from sales. Nevertheless, over the first 2 years from entry into force of the act, the duties specified therein will only apply to food sellers who run a food enterprise that sells food at at least one retail or wholesale unit with a sales area of over 400 m2. The regulation introduced a definition of food waste, which is to be construed as withdrawal from distribution of foodstuffs that meet the requirements of food law especially due to approaching expiry date or minimum durability date, as well as due to visual defects of these foodstuffs or their packaging, and discarding them as waste.

The first of the obligations foreseen in the act will be to enter into an agreement with a non-governmental organization with a view of transferring food free of charge to this organization to be used towards social purposes performed by this organization concerning: (1) social assistance, including assistance to families and persons in difficult life situations and providing equal opportunities to such families and persons; (2) supporting the family and foster family system; (3) charity, especially involving supply of food to the needy or running mass catering for the needy.

[14] Within the meaning of the Act of 24 April 2003 on public benefit activity and volunteerism (Journal of Laws of 2003, no. 96 item 873 as amended).

The next obligation is running educational and information campaigns at shops concerning rational food management and countering food waste, at least once a year for at least two consecutive weeks, on each day on which the shop is operating. Campaigns are to be run by food sellers in cooperation with the non-governmental organization with which they have concluded agreements. This solution must be assessed positively. Food sellers have much greater opportunities to affect consumers, and a great majority of non-governmental organizations have no experience in running such campaigns.

The last obligation is having to pay fines for wasting food. Even though the draft act mentions an obligation, in reality this fee is a kind of a financial sanction for food sellers who, despite having concluded agreements with NGOs, waste foodstuffs. The fee is calculated as a product of the rate and mass of the wasted food. The rate is PLN 0.1 per 1 kg of wasted food. The draft act introduces an obligation whereby the given entity calculates the amount of the fee on its own and pays it to the bank account of the NGO with which it has concluded the agreement concerning donation of food for social purposes. The fee is calculated at the end of the calendar year and paid by 30 April of the next calendar year. The basis for the fee calculation is 90% of the mass of wasted food. In the first year since the enactment of the new provisions, the basis for calculation of the fee will be 80% of the mass of wasted food. Such a solution seems reasonable, since it accounts for cases whereby even when an entity performs its obligations imposed by the act properly, it is still necessary to discard food as waste. The fee is to be reduced by the costs incurred by the food seller for conducted educational and informational campaigns, for which it will be possible to designate up to 20% of funds from the fee, and by the costs of performance of the agreement for donation of food concluded by the food seller, especially the costs of transport and distribution of food. The fee will not be paid if it does not exceed the amount of PLN 200. Information about the amount of the fee due or the value of food donated to non-governmental organizations for social purposes is to be revealed by the food seller in the financial report and on the food seller's website.

The draft regulation also stipulates rules for imposing administrative fines for failure to meet statutory obligations. These fines are relatively low. For not concluding an agreement on food donation for social purposes with a non-governmental organization - PLN 5,000, while for failure to make the payment or for not doing so within the prescribed time limit - between PLN 500 and PLN 10,000, which is why these fines cannot be an effective general preventive measure.

It must be emphasized that the draft act gives rise to a lot of controversies, both on the part of scholars and lawyers, as well as on the part of the agricultural and food economy sector. A number of examples can be given. In particular, it must be indicated that the addressees of the obligations imposed by the act can only be entities of the distribution sector, whose share in food waste in the EU amounts only to 5%. Thus, the regulations do not cover all participants of the food chain, and, importantly, the ones who contribute the most to food waste. The draft act entirely overlooks the issue of donating food for non-food purposes or donating food past minimum durability date, which is still fit for consumption. It imposes an obligation to conclude agreements, while at the same time not obliging public benefit organizations to do so. It also fails to mention what is to be done with food which is not fit to be donated anymore or which will not be picked up by the public benefit organization - does it count into the basis for calculation of fees?

Certainly, the many questions and objections are affecting the length of the legislation process. Works have been underway for 3 years now, the draft was first presented on 22 July 2016. It is impossible to avoid said objections in a matter of such social and economic importance. Nevertheless, even a fragmentary regulation of preventing food waste, one covering only the distribution sector, may serve as the first step toward introducing complex solutions, and it certainly shows the legislator's concern for food sovereignty based also on a

circular economy. The comprehensive regulation of preventing food waste, as well as the implementation of appropriate legal instruments, for example in the form of obligations and support systems addressed to all the participants of the food supply chain, seem to be a considerable challenge for both the EU and the domestic legislator.

4) Draft act on the use of farming estates for conducting non-agricultural business activities and draft act on the use of high-protein plants in animal feeds (Monika Żuchowska-Grzywacz, Ph.D., Kazimierz Pułaski University of Technology and Humanities in Radom)

Within the context of food security, it is worth mentioning draft acts in connection with which legislative works have been conducted. One of them, ultimately withdrawn due to a number of substantive and formal objections, was a private member's draft act on the use of farming estates for conducting non-agricultural business activities (Sejm Paper no. 702).

The draft proposed making it easier for farmers to conduct a business activity in rural areas by making it possible for them to register said activities in farming estate buildings. This was to allow farmers to diversify the sources of their income in the face of low profitability of agricultural activities, and to minimize their need to seek additional jobs outside of the farming estates, which could help reduce the migration of people to urban centres.

The proposed solutions aimed at making it possible for farming estates to be used for registration and conducting a business activity without losing their agricultural character.

As per the assumptions of the withdrawn draft, in order to run a business activity at the farming estate, a farmer would have to submit a written notification thereof to the starost territorially relevant to the location of the farming estate. Notification of the intention to start a non-agricultural business activity within the farming estate, besides information concerning the type of the business to be started, would have to contain documents confirming the legal title to use the agricultural real property forming part of the farming holding.

The starost, as per the changes proposed in the draft, could issue a decision prohibiting conducting the business in the notification. This could happen especially if the non-agricultural business activity to be conducted at the farming estate forming part of an agricultural holding could cause a loss to the land's use value as an effect of prospecting, exploration or exploitation of mineral deposits.

It must also be indicated that the amount of real property tax and agricultural tax due could become problematic. It seems that communes would be interested in charging double tax: first as agricultural tax on real property forming part of an agricultural holding, and next as tax on premises or buildings used for the purposes of the conducted business activity.

Owing to the foregoing issues, the draft gave rise to serious legislative objections. Nevertheless, it must be said that the direction of undertaken measures with a view of facilitating non-agricultural business activities to farmers at farming estates is justified.

It seems that one reasonable solution in respect of allowing farmers to conduct non-agricultural business activities without having to exclude land from agricultural production would be provided by a relevant amendment to the act on the protection of agricultural land and forests.

The next draft on which legislative works are underway is a private member's draft act on the use of high-protein plants in animal feeds.

The aim of this act is to reduce the import of feed protein, mainly post-extraction genetically modified soybean meal, and to establish a minimum share of protein crops in feed produced in the territory of the Republic of Poland.

Increasing the use of high-protein crops in the production of feed is to take place through the introduction of the National Indicative Target, i.e. the minimum share of high-protein crops in the total amount of feed marketed in the territory of the Republic of Poland. The draft act defines the National Indicative Target for the years 2017-2020 in the following way: 40% in 2017, 70% in 2018, 80% in 2019 and 90% in 2020.

The draft act stipulates that entities conducting economic activity in the field of production, import or trade of feed will be obliged to ensure at least a minimum share of protein crops in the total amount of feed marketed in the territory of the Republic of Poland. The draft act provides that an entity operating on the feed market which produces feed containing high-protein plants will not be able to replace high-protein plants with other feed materials. Further production of feeds by an entity conducting business activity in the scope of their production will only be possible if it concludes a contracting agreement with a farmer running an agricultural holding on the territory of one of the Member States of the European Union (EU) or with an entity conducting activity in the scope of introduction of feeds based on high-protein plants to the market. In accordance with the requirements specified in the draft act, such an agreement will have to be concluded for a period not shorter than 2 years.

It was established that inspections concerning the obligation to produce feed with a minimum proportion of protein crops introduced by a given operator into the territory of the Republic of Poland would be carried out by the Veterinary Inspection.

It should be stressed that in the coming years it will not be possible to replace soybean protein with protein derived from domestic crops, therefore there is a risk that Poland may become an open market for feed materials produced by foreign entities operating on the feed market.

Many entities operating on the feed market, after the entry into force of the draft act, will have problems with production of feed and running their current business activity in accordance with the new regulations, due to, among others: the necessity to change the technological lines, additional costs related to new recipes development and printing new labels, lack of possibility to place reliable composition of the produced batch on them in such a short period of time, and consequently the risk of violating the law by a given entity, both at the EU and national level.

Abandonment of feed production under the existing rules may result in lower revenues to the budget of financial resources, because the regulations proposed in the draft may result in a reduction of domestic production, but they will not protect Poland against the inflow of ready-made complete feed from the entire area of the European Union.

In addition, the issue of consistency with EU law is particularly questionable.
It should be stressed that no EU Member State has introduced similar solutions in its territory. Poland would be the first country to introduce such an indicator. The draft law should be reviewed in terms of its compliance with the European Union law. Despite the declarations of the project proponents on the coherence with the EU law, there is a very high risk of its violation.

Undoubtedly, these are desirable changes. However, it should be pointed out that they require far-reaching clarification.

5) Judicial decisions (Patryk Kalinowski, LL.M., Faculty of Law and Administration, University of Warsaw)

The concept of food security is present, but admittedly rarely so, in the judicial decisions of Polish common and administrative courts. Nevertheless, it does not appear in the

jurisprudence of the Constitutional Tribunal nor in practice in the activities of other administrative bodies (apart from the National Centre for Agriculture Support).

In one of the basic sources of information on court rulings in Poland - the LEX legal information portal - a query for "food security" returned 2728 court rulings (as at 27 June 2019). In reality, however, this term appears in just a few tens of rulings. In the jurisprudence of common courts, there are at least 5 judgements and decisions (4 of them from 2017) and two rulings of the Supreme Court (from 2017 and 2018). As far as the jurisprudence of administrative courts is concerned, there are at least 23 rulings of the Voivodship Administrative Courts (2 since 2017) and 11 rulings of the Supreme Administrative Court (5 from 2017-2019). Yet one should not draw excessively far-reaching conclusions based on this partial data about the potential increase in the presence of the concept of food safety in the jurisprudence of Polish courts. It can only be stated that such rulings appear in many aspects, which are presented below.

In the jurisprudence of common courts, in the context of food security, there appear cases related to the use of agricultural real estate in connection with the implementation of the Act of 11 April 2003 on the agricultural system. In accordance with the previous state of the law, the court issued the consent to sell or give possession of agricultural real estate during the period of the obligation to run a farm in person after its acquisition (currently it is done by way of an administrative decision). Against this background, courts referred to the assumptions and justification for the amendment of the aforementioned Act of 2016, which aims at "public safety and public health by ensuring food security for the entire society, i.e. guaranteeing the satisfaction of one of the most basic human needs" (see the decision of the District Court in Wąbrzeźno of 16 November 2018, I Ns 242/18, LEX No. 2623281). The issue of food security also appeared in the jurisprudence of the Supreme Court in secondary considerations concerning the exemption from the above obligation (see Supreme Court resolution of 7 September 2018, III CZP 32/18, OSNCK2019/6/62). In none of the analyzed cases is the concept of food security the subject of broader or more detailed consideration of the courts.

In respect of the judicial decisions of administrative courts, the concept of food security emerges in a number of contexts. One of the most common issues is the implementation of the obligation to obtain the consent of the Minister of Agriculture and Rural Development to change the use of agricultural land of the highest classes I-III (on the scale of I-VI) for non-agricultural and non-forest purposes pursuant to the provisions of the Act of 3 February 1995 on the protection of agricultural and forest land. For example, in accordance with the judgement of the Supreme Administrative Court of 6 December 2017, II OSK 500/17, LEX No. 2431208, the Minister's refusal to grant permission for the use agricultural land for the construction of a wind power plant was upheld in a situation in which the body disposing of the land (the commune) had land of lower class at its disposal nearby.

Cases concerning change of land use also regard, for example, development plans for agricultural land located in the vicinity of a planned expressway (judgement of the Supreme Administrative Court of 8 May 2018, II OSK 1506/16, LEX No. 2527637). In this case, the Supreme Administrative Court rejected the cassation appeal of the Minister of Agriculture after the Provincial Administrative Court overruled the Minister's negative decision. The Supreme Administrative Court pointed out that one should take into account both "the interest

of ensuring the food security of the country and the social interest of improving the economic and development conditions of the inhabitants of the commune in which the areas covered by the application [for change of land use] are located".
In turn, the Voivodeship Administrative Court in Warsaw in its judgement of 21 June 2017, IV SA/Wa 811/17, LEX No. 2400888 drew attention (following earlier case-law) to the national context of food safety assessment: "These [agricultural] lands are the basis for ensuring the food security of the country, hence the obligation of rational management of this resource. Although changing the use of this single plot of land would not directly cause a threat to this security, on a national scale, any such use of agricultural land for non-agricultural purposes may be significant, as the area of agricultural land most valuable for agricultural production is reduced.
The issue of food security also arose in the context of the obligation to register animals. Pursuant to the judgement of the Supreme Administrative Court of 20 June 2018, I GSK 700/18, LEX No. 2526685, the court stressed that "the authority in its decision of (...) June 2015 correctly indicated that the purpose of establishing registration obligations, including notification of animal movements, was to make it possible to determine the place of origin and residence of a specific animal, and the violations in this respect are important for food safety".

Irrespective of the occurrence of the concept of food safety in judicial practice, it often appears in decisions of the National Centre for Agriculture Support (the body responsible for influencing the agrarian structure and issuing permits for the acquisition of agricultural real estate in specific cases) and of the Minister of Agriculture and Rural Development, who is an appeal body.

6) International agreements (Patryk Kalinowski, LL.M., Faculty of Law and Administration, University of Warsaw)

Generally speaking, the freedom of independent conclusion of international agreements in economic matters is significantly limited due to membership in the European Union, but despite this, the issue of food security appears in international law agreements concluded by the Republic of Poland (especially in agreements concerning agriculture).

One of the recent instruments where the concept of food security has emerged was the preamble to the agreement between the Republic of Poland and the Government of the Republic of Kazakhstan, concerning cooperation in the area of agriculture and entered into on 22 August 2016 (M.P. of 2017, item 311): "Considering the mutual desire to develop cooperation in the field of agriculture on a mutually beneficial basis, aware of the important role of the agricultural sector in the development of the economy and in ensuring food security...". While the practical relevance of such declarations remains a matter for discussion, it cannot be ignored that food security is at times explicitly expressed in the instruments designed to set the framework for inter-state economic cooperation.

7) Polish legislation vis-a-vis the goals expressed in the "Voluntary Guidelines on the Responsible Governance of Tenure of Land, Fisheries and Forests in the Context of

National Food Security" (Monika Łata, LL.M., Faculty of Law and Administration, University of Silesia in Katowice)

The Polish law makes a reference to the connection between the "right to adequate food" and "governance of tenure of land, fisheries and forests" expressed in the VGGT. This relationship is visible in the Act of 11 April 2003 on the Agricultural System (Journal of Laws of 2018, item 1405 as amended). It can be identified in the preamble to this Act, which lists the fundamental reasons for its enactment: strengthening protection and development of family farms, ensuring proper management of agricultural land in Poland, concern for ensuring food security of citizens and supporting sustainable agriculture. Further on, the Act introduces certain mechanisms aiming to improve the area structure of agricultural holdings, preventing excessive concentration of agricultural land, supporting the development of rural areas and active agricultural policy of the state or support for the farming industry. The protection of an individual farmers and their family farms, as well as instruments such as the right of pre-emption of a tenant of agricultural real estate, the right of pre-emption and the right to acquire land to which the National Centre for Agriculture Support is entitled, as well as specific obligations of a purchaser of agricultural real estate constitute means of control over the management of agricultural land in Poland in the context of broader social, economic and environmental objectives.

It seems that the most important of the VGGT guidelines is anchoring the management of land, fisheries and forests in human rights as a fundamental right to be recognized, respected and guaranteed. Particular attention should be paid to the so-called marginalized groups, i.e. individual farmers, small producers and their communities, fishermen or users of forest areas. These are groups which are discriminated against by policies and mechanisms implemented at national and EU level. Meanwhile, it is essential to protect their rights and to recognize the role they play in achieving national food security. Another problem is the lack of access to land, which mainly affects small farmers and people planning to work in agriculture. Here, different forms of access to public land (from use, rental to ownership) need to be ensured. Another aspect of importance to Poland is the fight against ongoing conversion of agricultural areas for non-agricultural uses, and appropriate spatial planning. Investment policies at national and EU level favour the industrial model of agriculture, support the creation of large farms and encourage non-agricultural land use. Taxes and revision of existing investment

policies are one of the instruments to counteract this. The guidelines are relevant at international, EU and national level.

Food sovereignty means above all the right of people and countries to autonomously define their agricultural and food policies that will satisfy their needs and allow them to accomplish their goals of sustainable development without detriment to third countries. For Poland's land policy, the VGGT's move toward food sovereignty means giving priority to local food production and consumption, based on the promotion of sound and fair rights of access to land for small farmers and people planning to work in agriculture. It also means an emphasis on equitable distribution of means of production, combined with policies to promote equitable sharing of the benefits from state-owned land, fisheries and forests, to be developed through a broad public consultation process. This is important in view of the conditions in Polish agriculture, which still has too little impact on the food supply chain. It seems that the VGGT guidelines should also refer to policies and trade practices for agricultural products that ensure safe and culturally appropriate food and proper, healthy and ecologically sustainable production.

The situation of agricultural land in the EU, presented in the European Parliament resolution of 27 April 2017 on the current state of agricultural land concentration in the EU, leads to an unambiguous conclusion that it is necessary to improve and develop a transparent EU model of agricultural structure. The VGGT recommendations to Member States to take into account broader social, economic and environmental policy objectives and to prevent undesirable impacts of land speculation and its concentration on local communities when taking measures related to the use and control of state resources feed into this agricultural structure model. This should be based on the reorganization of policies relating to land, fisheries and forests in order to guarantee fair access to land and natural resources and to prevent land concentration and land grabbing. It is essential to pay attention to marginalized groups and to strive to use land in a way that ensures sustainable food production, rather than treating it as a source of profit for large market producers.