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FARMLAND AS A "COMMON"? TWO CASE STUDIES REGARDING SUSTAINABLE FARMING IN NORTHERN ITALY

JE POĽNOHOSPODÁRSKA PÔDA „SPOLOČNÁ"? DVE PRÍPADOVÉ ŠTÚDIE O UDRŽATEĽNOM POĽNOHOSPODÁRSTVE ZO SEVERNÉHO TALIANSKA

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I. Introduction

In this short paper, I present two private initiatives concerning sustainable and ethical farming in Northern Italy, questioning whether and to what extent it is possible to identify the main features of the so-called "environmental commons" as their ethical and legal background. To develop my arguments, I will proceed through the following structure.

In the first part, I will focus on the category of the environmental commons. After having set out a definition, I will proceed with the identification of the core elements of this phenomenon. In the second part, I will analyze two case studies that I consider significant for our present purpose. These are two private initiatives arising from the civil society in Northern Italy. The first is an example of "Community Supported Agriculture" (henceforth "CSA") called Arvaia. The second example is a uniquely Italian initiative named "Groups for the Acquisition of Lands" (henceforth: GAT). I will illustrate how these two projects work and the main principles characterizing their statutes and structure. While describing these initiatives, I will highlight how and how much the main features of the commons outlined above are present in their statutes and in their ethical and organizing principles. These considerations lead me to the final part of this paper, where I submit some open questions for further research, given the limited length of this article: Can we talk about "farmland as a common", in light of the cases considered? Or are there some obstacles that hinder such a definition?

II. Materials and methods

The materials used for this short research come almost exclusively from existing literature, laws, official documents and websites. The methods embraced in this paper are mostly qualitative. The way of proceeding through the arguments is slightly unusual. Indeed, I will start with the consideration of the commons, and not with our specific case studies. Having set out clearly the main features of the commons will clarify

Abstract (EN)

Eco-sustainable and ethical farming initiatives arising from civil society have had an increasing popularity all over the world in recent decades, and Italy is no exception to this trend. This contribution is aimed at presenting two significant case studies from this country concerning sustainable and ethical farming, one of which is a uniquely Italian experience. What I argue is that it is possible to see the main features of the theory of the so-called "environmental commons" as the ethical-legal basis in the background of these initiatives. Through a sort of inductive approach of research, the examination of the two case studies offers the possibility to propose a more general inquiry, i.e. to question whether and how these experiences can be expressive of a new conception of farmland, which can be labeled as "farmland as a common".

Keywords (EN)

sustainable and ethical farming, Community Supported Agriculture (CSA), commons, civil society, farmland protection, Northern Italy, agricultural land

Abstrakt (SK)

Iniciatívy v oblasti ekologickej udržateľnosti a etického poľnohospodárstva vyplývajúce z občianskej spoločnosti sa v posledných desaťročiach stávajú čoraz populárnejšie, a to na celom svete, Taliansko nevynímajúc. Cieľom tohto príspevku je prezentovať dve významné prípadové štúdie z tejto krajiny týkajúce sa trvalo udržateľného a etického poľnohospodárstva, z ktorých jedna je talianskym unikátom. V príspevku tvrdíme, že etickoprávny základ na pozadí týchto iniciatív vychádza z hlavných charakteristík teórie tzv. „environmentálnych komún". Analýza dvoch prípadových štúdií prostredníctvom induktívneho prístupu k výskumu viedla k formulácii všeobecnejšej otázky, a to, či a ako môžu byť tieto skúsenosti výrazom novej koncepcie poľnohospodárskej pôdy, ktorú možno označiť ako „spoločný zdroj"

Kľúčové slová (SK)

udržateľné a etické poľnohospodárstvo, komunitou podporované poľnohospodárstvo, spoločné zdroje, občianska spoločnosť, ochrana poľnohospodárskej pôdy, severné Taliansko, poľnohospodárska pôda

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better *what to look for* when considering the case studies. In this way, I can highlight more precisely the elements of the cases considered which are typical of the theory of the commons.

III. The commons: definitions and core features

The category of the commons has generated increasing interest on the part of both academic scholars and civil society actors in recent years. Perhaps one of the main reasons for this interest derives from the fact that the commons can be studied from a wide array of perspectives, all intertwined with each other. Legal scholars, sociologists, economists and philosophers, to name a few, have all discussed and debated this fascinating interdisciplinary topic. For the purposes of this paper, though, I will mainly consider the contributions coming from the legal perspective.[1]

There is no universal consensus, neither as to the definition nor the taxonomy of the commons. However, we can affirm that there is a widespread agreement on the core features that constitute this category. Among the various possible definitions, I believe that the one given by Capra and Mattei (2015) is one of the most comprehensive and thorough. These authors argue that the commons "are neither private nor public. Nor are they understood as a commodity, as an object, or as a portion of the material or immaterial space that an owner, private or public, can put on the market to obtain their so-called exchange value. The commons are recognized as such by a community that engages in their management and care not only in its own interest but also in that of future generations."[2]

As we can see, this definition is very broad. Traditionally, scholars include in the commons all the natural resources that are *essential for life* and that *we all share equally*: the air, the oceans, rivers, lakes, glaciers, the forests, etc. We can refer to these commons as *environmental* commons (henceforth, simply "commons") and they constitute the focus of this paper.[3] Another important feature of the commons, which integrates the above definition, has been especially underlined by economists. That is, the commons are goods, which are both *non-excludable* and *rival*. These terms entail, respectively, that potentially no one can be excluded from the enjoyment of these goods, and that the enjoyment of them by one person decreases its availability for others. [4]

Therefore, starting from this definition and then making use of the relative literature, we can extrapolate what I believe are the core elements of the category of the commons. These elements can be grouped under four headings: *(A) rejection of public-private dichotomy; (B) holistic approach; (C) community management; (D) intergenerational justice*. Let us proceed to analyze them separately, even if all these features are deeply intertwined with each other, so that the full understanding of one often depends on the understanding of all the others. Furthermore, we must specify that a full explanation of the features of the commons is not possible in a short paper such as this one, in particular because it is not our present purpose. What interests us here is simply to have an overview of the core elements of this category.

(A) - Rejection of public-private dichotomy. This first feature is probably the most important and, at the same time, the most problematic and politically radical. Commoners claim that the commons are goods that cannot fall within the traditional "public-private" dichotomy property.[5] From the modern age onwards, the dichotomy of "public-private" has been assumed to be exhaustive, i.e. no other forms of property can be imagined outside them. In other words, an asset can only be owned by a private subject or by the State: *tertium non datur*.[6] Within this framework, how do commons exist outside this dichotomy, constituting a *tertium genus*[7] compared to both public and private property? Starting with private property, the explanation is somehow the easier one. As hinted above, commons are goods, which we all equally share and which are essential for life (e.g. the forests, the air, the water, the fisheries, the fruits of the land, landscapes, natural sources of energy, and so on). For this reason, to entitle individuals to own pri-

(1) Notably, I will mainly focus on the Italian literature on the topic, since the paper deals with an Italian situation and some of the most relevant contributions on the commons in the last years are coming from this country.

(2) Capra, Mattei (2015)

(3) Some scholars include in the taxonomy of the commons even immaterial goods such as the Internet, or even "everything that is obtained by social production, which is necessary for the social interaction and for the continuation of this production, in the form of knowledge, the languages, the regulations, information, affections, and so on" (Hardt, M., and Negri, A., *Comune*, Rizzoli, Milano, 2010, my translation).

(4) Cf. HARDIN, G., 'The Tragedy of the Commons', Science, 162(3859): 1243 - 1248, 1968. The classic example is fisheries: the more fishermen exploit this resource, which is freely accessible by anyone, the more the availability of fish in that location decreases. Economists usually distinguish commons from public goods (non-excludable and non-rival), private goods (excludable and rival) and "club" goods (excludable and non-rival).

(5) Cf., among others, MATTEI, U., *Beni comuni. Un manifesto*, Laterza, Bari-Roma, 2011; Capra, Mattei (2015); OSTROM, E., Governing the Commons. *The Evolution of Institutions for Collective Action*, Cambridge University Press, Cambridge, 1990; Hardt, Negri (2010); BARNES, P., *Capitalism 3.0 - A Guide to Reclaiming the Commons*, BK Publishers, San Francisco, 2006; BOLLIER, D., Think Like a Commoner*: A Short Introduction to the Life of the Commons*, New Society Publishers, Gabriola Island, Canada, 2014.

(6) The historical shift which marked an essential milestone towards this totalizing polarization between the private and the public sphere is considered to have started with the Scientific Revolution (XVI sec.) and then to have been consolidated with the Industrial Revolution (XVIII sec.). The phenomenon of the enclosures, corroborated by the theorizations from the most eminent philosophers (e.g. Hobbes and his Leviathan, Locke and his "natural right to property", to name a few) and scientists (e.g. Newton, Galilei) contributed to the formation of a two-poles structure where no other forms of property were imaginable outside the exhaustive State-private dichotomy. What is argued by the commoners is that the construction of private and public property is essentially an ideology brought about by modern thought, which does not have grounds in "naturalistic" bases, as it instead claims to have. Cf. Capra and Mattei, 2015; Mattei, 2011. For a similar historical reconstruction, cf. Merchant, C., *The Death of Nature: Women, Ecology and the Scientific Revolution*, Harper, New York, 1990.

(7) Cf. Mattei (2011)

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vate property made up of these particular goods is considered to be unfair, since it would exclude all the non-owners from their enjoyment without a reasonable justification. Indeed, private property traditionally entitles the owner to have exclusive rights of enjoyment over the asset, in this way challenging the very nature of the commons, which, as we said, are on the contrary, *non-excludable* goods.[8] Along similar lines, commons also reject every form of commodification of natural resources. Indeed, given their incommensurable and, most of all, irreplaceable value, the commons are considered to be incompatible with their exchange and availability on the market similarly to every other commodity.

Regarding the rejection of the other element of the dichotomy, i.e. public property, the question is slightly more complex and is characterized by slightly sharp political claims. Various authors, not only commoners, have argued, especially in recent decades, that the State has become subject to an increasing power deriving from private actors. Furthermore, they claim that the State has started to act as a "large" private owner, dismissing common goods through liberalizations and privatizations for the sake of relieving its debts. In other words, what is claimed is that most of the time public property, instead of absolving its collective function, has merely become "the other side of the coin" of private property.[9]

That said, in contrast to these elements the commons postulate a form of *collective* property which falls outside of both the private and the public properties. Indeed, while traditional property is *exclusive*, *individualistic* and it stands as the main cornerstone of a competitive market, the commons advocate a radically different conception of property, which is *inclusive*, *participative* and *cooperative*.[10] Moreover, while traditional property conceives a concentration of power in the hand of a single or a few owners, common property is aimed at a diffusion of power amongst all the various subjects entitled to that asset. [11]

(B) – Holistic approach. A second feature characterising the commons is a *holistic* approach to ecology and, in general, to the human-nature relationship. A holistic approach is aimed at considering systems in their wholeness, and not as a mere sum of their individual components. In this way, the value given to the whole is different and "higher" than the value attributed to the singular parts that compose this whole. The example of natural ecosystems is particularly explicative in this sense. The life of an ecosystem depends on the efficient functioning of all its components which work and thrive within an interconnected and inter-dependent web of equal relations. Translating this reasoning into the human-nature relationship, the commons postulate an approach which does not only address the welfare of humans alone or of non-human nature alone. On the other hand, the commons attempt to offer a sort of compromise between these two opposites, and they advocate an ecological view which sees human and nature in an equal relationship with each other. The commons aim at a human welfare *within* and not *above* nature. As Mattei eloquently says, we do not *have* the nature, but, in a certain sense, we *are* the nature.[12] In sum, in opposition to a mechanistic, reductionist and hierarchical view, the commons advocate instead a holistic view, where humans, nature and the whole ecosystem are considered to be interconnected in an equal web of relations.[13]

(C) – Community management. A second element of the commons is that they are identified and managed by a community, which considers them essential for their life and for their welfare. Regarding this feature, it is impossible not to mention the famous work by Nobel Prize winner Elinor Ostrom. In her *Governing the Commons*, she catalogued a wide range of examples of communities around the world, which, without the intervention of public or private property, managed to efficiently govern common pool resources (e.g. fisheries, water) in a sustainable and regenerative way (the so-called *commoning*). What is important to stress beyond this example is that the commons are those goods, which the community of reference has deemed essential for its life and for that of future generations. Moreover, the term community bears a strong political message. A community is not a mere sum of people. On the contrary, a community is a group of people, which is cohesive, cooperative and supportive in the management of goods that are essential for its life. In addition, since many commons are considered to be "global" (e.g. the atmosphere, the oceans), the term community can be elastically interpreted in a *spatial* way, i.e. considering as part of this community all the individuals who have an interest in the preservation of them, in a sort of "all-affected" mechanism. [14]

(D) – Intergenerational justice. Finally, there is the element of intergenerational justice. As we have already said, the commons are goods, which, due to their peculiar nature, can potentially be exploited by everyone, while no one can be excluded from the enjoyment of them. The example of most natural resources is an evident example of this. But it is also patent how this feature dooms these goods to a certain extinction (Hardin's "tragedy"), if they are not managed in a way that enables their reproducibility and regeneration over time. For this reason, in addition to what was said in the above paragraph, the element of community is also elastically interpreted in a *chronological* way by the commoners. Indeed, not only are present generations deemed to have an interest in the preservation of the commons, but also and foremost the *future* generations, since they can be extremely jeopardized in the enjoyment of natural resources if the current rhythms of exploitation are maintained.

[8] Especially after Hardin's article in 1968, private property has been deemed to be the best solution in order to avoid the "tragedy" of the commons. Indeed, the institution of private property naturally limits the otherwise free use and consumption of common natural resources by everyone.

[9] Cf. especially Barnes (2006); Mattei (2011); MATTEI, U., *Il benicomunismo e i suoi nemici*, Einaudi, Torino, 2015 and other literature from the same author.

[10] Cf. *idem* and Ostrom (1990)

[11] Cf. idem.

[12] Cf. Mattei (2011)

[13] Cf. Capra and Mattei (2015)

[14] On the issue of "ecological communities", see Capra and Mattei (2015): 28-29; 131-136; 144-145. See also MATTEI, U. and QUARTA, A., *Punto di Svolta. Ecologia, Tecnologia e Diritto Privato. Dal Capitale ai Beni Comuni*, Aboca, Sansepolcro, 2018.

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IV. Two case studies

At this point, it is worthwhile illustrating two significant examples of sustainable and ethical agriculture coming from civil society in Northern Italy. As I pointed out at the beginning, I will particularly focus on the statutes and on the organizing and ethical principles at the basis of these initiatives, highlighting how much they resemble the aforementioned features of the commons.

IV.1. Arvaia: an example of Community Supported Agriculture (CSA)

Arvaia is an interesting example of CSA in Northern Italy. More precisely, this CSA carries out its activity in the area of Bologna, the main city of the Emilia-Romagna region. Founded in 2013, it defines itself as a "cooperative society made of citizens, producers and farmers"[15]. As the label CSA suggests, Arvaia is a project that has the main aim of cultivating its lands (47 hectares) thanks to the material and financial contribution of the community of its members and volunteers. Its functioning is quite simple. At the beginning of every year, the budget is calculated and presented to the members, so that they can pay their shares to finance the activity of Arvaia (Arvaia does not borrow money from banks). Usually, a *suggested average share* for each member is calculated, so that the sum of all contributions can cover the annual budget. However, in a spirit of solidarity that characterizes this initiative, members can also anonymously offer more than the average share, to compensate the eventual lower contributions by members who are unable to afford this expense. Then, once a week, for 49 weeks per year, part of the vegetables and other products of Arvaia (such as honey, bread, cereals) is distributed to the members in various collection points throughout the city.

But what are the aims and principles of Arvaia, which mirror and express most the theory of the commons outlined above? First of all, Arvaia cultivates in a completely eco-sustainable manner (endorsing agroecology), and its products are all organic and locally produced. In this way, this CSA pursues the goal of shortening the supply chain, bringing citizens closer to organic farming and to the production which is behind the food they consume every day. In this regard, Arvaia speaks of an *alliance* between who produces the food (the farmer) and the consumer, defining itself as an "*open and supportive community* of citizens, which sets itself the objective of directly cultivating its own food in a sustainable way".[16]

Therefore, it is interesting to notice that Arvaia's activity is also aimed at fostering the social dimension of agriculture. Indeed, Arvaia also offers teaching programs for its members and volunteers, it hosts internships and, in a spirit of social inclusion, it opens internal paths in its fields to citizens who would like to enjoy the farm and the local landscape. In this regard, Arvaia eloquently affirms that "it does not only cultivate food, but also social relationships, cooperation and participation"[17] among members who, as a proper *community* in the sense described above, collectively decide what vegetables they want to be cultivated. Indeed, Arvaia aims at fostering as much as possible an *inclusive participation* of all members in the choices of the CSA.

Another feature in line with the commons can be found in Arvaia's conception of food sovereignty. Here, Arvaia explicitly affirms that the community of producers and consumers should be "at the heart of food politics and systems and above the pure logic of profit characterising modern neo-liberal market". More than this, Arvaia endorses a conception of food sovereignty which could "*defend the interests and the integration of future generations*, and which could resist and dismantle the neo-liberal market and the contemporary nutritional regime, deemed economically, socially and environmentally unsustainable"[18]. This rejection of commodification can also be seen in the statute of Arvaia, where it is affirmed that "the time, the capacities and the competences of the members are relational goods which are made up of knowledge, expertise, reciprocal trust, and many other characteristics which are neither measurable nor convertible into money".[19]

Interestingly for our purposes, Arvaia also explicitly promotes in its statute a "participative and sustainable use of fundamental *commons*: the land, the air, water, the landscape, energy, knowledge and genetic heritage".[20] In sum, we can surely say that Arvaia embraces a *holistic* conception of farming. Indeed, Arvaia pursues an idea of agriculture which does not only take into account the good status of its land and of its members, but which is also aimed at the welfare of the whole planet. In its statute this CSA recognizes the Earth ecosystem as a "great living organism, and humans are responsible for its welfare", and it attempts to enhance the associates' connection with the territory within a systemic and integrated context, where the welfare of every component is important.

IV.2. The Groups for the Acquisition of Lands (GAT): a uniquely Italian experience

The second case study is a uniquely Italian experience founded in 2008 near Mantova, in the Lombardia region: the "Groups for the Acquisition of Lands", also known with its acronym "GAT". This initiative started as a response to the financial crisis of 2008, thus advocating a return to a "real" economy, which does not appeal to financial markets but only to local in-

[15] This and all the following quotations of this paragraph are taken and unofficially translated by me from the official Arvaia website (http://www.arvaia.it/), thanks to the kind collaboration of its organizing committee.

[16] *Idem.*

[17] *Idem.*

[18] *Idem.* In particular, see the document available at http://www.arvaia.it/agro/wp-content/uploads/2017/07/che_cosa_intendiamo_per_sovranita_alimentare.pdf.

[19] *Idem.*

[20] *Idem.*

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vestments.[21] Indeed, GAT is a foundation [22] that coordinates and promotes the collective purchase of farmland activities through the investment from small investors (usually families) within the Italian territory, using a model, which resembles the so-called "fair trade purchasing groups".

The way GAT work is quite straightforward. First of all, the designated farm that expresses its will to become a GAT farm should have certain requirements[23]. For example, the farm should produce organic food and/or high-quality agricultural products. Its area cannot be smaller than 10 hectares; the farmer should accept a business plan and they should be available to constitute a limited liability agricultural company with the GAT foundation; and satisfy other requirements. [24] Therefore, a farm which possesses these requirements is identified. A team of designated experts draws up a report that describes the "state-of-the-art" of the farm, which will be presented and promoted to the potentially interested investors.[25]

GAT does not only pursue *economic* aims, such as preserving and incrementing the value of the investment made by the associates (indeed, nowadays investing in land means investing in an increasingly scarce – and, thus, increasingly valuable – asset). It first and foremost pursues *ethical and ecological principles* that resemble very much the theory of the commons illustrated above. Indeed, GAT farms embrace an ecological way of carrying out agriculture, with the production of organic food (the method chosen is preferably permaculture, which is a very stable and resistant productive system over time that requires low energy inputs).[26] In addition, it advocates a shared vision of agricultural values between investors and farmers, eliminating the intermediaries between producers and consumers, thus choosing a very short supply chain like Arvaia. Among its principles, GAT aims to promote an ecological agri-food culture with a very wide meaning. This entails promoting not only education in terms of a healthy food regime, but also pursuing a more holistic conception which, in addition to physiological aspects, covers other important features of life such as culture, tradition, sociality, the notion of territory, and others.[27] The GAT foundation also engages in and finances a wide range of activities other than agriculture, which are holistically interconnected in the spirit of ecology, sustainability, social inclusion and participation (so-called "social agriculture"[28]). For example, GAT promotes projects in the field of renewable energies, it provides scholarships and awards, it invests in scientific research on agriculture, it offers assistance on every aspect related to the agri-food sector to companies and private individuals, and many other diverse activities.

V. Farmland as a common? An open question

At this point, we can surely affirm that most of the principles of the commons are present in the considered case studies. Indeed, we see how both Arvaia and GAT operate endorsing a holistic approach to farming, which does not only address agriculture *tout court*, but also takes into account the important role of the community of reference in a spirit of social inclusion and cooperation, without ignoring the interests of future generations. Therefore, are our cases examples of "farmland as a common"? This question is embedded in a more general inquiry, that is: can the good "farmland" (or "agricultural land") be a common according to the definition set out above?

Despite appearances, the answer cannot be, *prima facie*, totally affirmative. Indeed, we have to bear in mind the first and most critical feature of the commons, namely *their rejection of both private and public property* in their traditional meaning. Indeed, it seems unproblematic to think about farmland as a holistic asset, managed by a community even in the interests of future generations. On the contrary, some issues would arise if we affirmed that farmland were neither private nor public, but a common. Before making such an assertion, our contemporary liberal-constitutional states would waver: as we have said, the public-private categories have been the only possible two alternatives for the ownership regimes of goods for centuries. Affirming that the good "farmland" is a common would starkly clash with all the existing situations regarding the ownership regimes on agricultural lands in Italy (and elsewhere in the world). Indeed, in most of the cases land is *privately owned* or, at least, owned with the traditional forms of property. However, we must consider that agricultural land is not a "usual" asset such as other commodities. Agricultural land is a par-

[21] A similar experience comes from France, with the project named Terre de Liens (https://terredeliens.org/). Unlike GAT, however, this initiative relies on the financial market. Cf. MOISO, V. and PAGLIANO, E., 'Azionariato fondiario e gestione collettiva: una "Terre de Liens" italiana?', in *Agriregionieuropa*, anno 9, n. 33, giugno 2013, available at http://agriregionieuropa.univpm.it.

[22] The information regarding GAT that follows is taken and/or unofficially translated from the official GAT website https://www.fondazionegat.it/. I would like to thank its founder, the lawyer Rosanna Montecchi, who kindly provided me with additional information on the recent GAT projects. So far, there are three GAT farms in Italy: one in Mantova (Lombardia), one in Parma (Emilia-Romagna), one in Scansano (near Grosseto, in Tuscany). However, the number of farms applying to become GAT associates is constantly increasing.

[23] Among these, the farm should possibly be an already working farm (the majority of cases), even if GAT does not exclude considering abandoned or uncultivated agricultural lands for its project.

[24] Cf. GAT website https://www.fondazionegat.it/.

[25] Associates (preferably physical persons, usually families) participate with the purchase of equal shares whose value is between 10,000 and 20,000 euros each, depending on the business plan (existing GATs number between 70 and 85 associates). Every associate can purchase a maximum of four shares, in order to avoid dominant positions within the assembly.

[26] Interestingly, it is possible to see in GAT's background even the theory of degrowth by Serge Latouche. Cf. LATOUCHE, S., *Farewell to Growth*, Polity, Cambridge, 2010.

[27] As made explicit by GAT, one of its main objectives is to "stimulate the constitution of a quality system of agri-food products which can be immediately applied to the territory in its wholeness"

[28] The most recent example of this is the Corte Grande Canedole project ("Cittadella GAT"). GAT is financing and sponsoring the regeneration of an 1875 rural court in the area of Mantova. This project aims to make Corte Grande the GAT headquarters as well as a multifunctional center of activities: organic and sustainable agriculture, projects of inclusion of weaker groups of the local population (such as disabled and elderly people), and the creation of new job positions are among the main purposes.

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ticular natural resource which, as also the Italian constitution affirms[29], has also a *social* function embedded within itself. Indeed, agricultural land is essential for the sustainment of our lives, not only as a food provider, but also due to its function of carbon storage and for many other reasons. Thus, the owner of agricultural land is not totally free to use this asset in whatever way they wish: they have specific limitations in the enjoyment of its property. Notably, in most cases the owner of agricultural land has the specific *duty* to cultivate it and to maintain it cultivable also for the future.[30]

In light of these considerations, therefore, is it possible to affirm that farmland is a common, given its essential social function that we have just pointed out? An affirmative answer to this question would still be opposed by the fact that, in the Italian legal system as well as in many other countries, this would entail "inventing" a third and new category of ownership and formalizing it in legislation and official policies. However, most of all, affirming that farmland is a common would have to face the fact that normally most of the owners *do not want* their asset to be *commonly owned*, nor do they want an inclusive participation of the community in the choices regarding their asset, and so on. As is often the case, especially for large-scale farmland, owners primarily want to gain the maximum profit from their asset, and they want to manage their land through an exclusive and individualistic form of ownership (the traditional form of private property), without permitting a diffused power on the land for all members of the community.

Therefore, is there some possible way to avoid these problematic issues and to consider farmland as a common? A thorough answer to this question would surely need deeper and longer research that is not possible in such a short paper as this. However, some hints for a possible answer can perhaps be found in what can be considered the highest peak of the formulation of the commons in our country in recent decades: the work by the Commission headed by the famous legal scholar Stefano Rodotà in 2007[31]. Interestingly, this reform scheme was pur forward again in the form of a popular legislative initiative proposal in 2018, ten years after the original formulation.[32] Very simply, the Commission suggested for the first time introducing the category of the "commons" into the taxonomy of goods that are set out in the Italian Civil Code. The Commission defined the commons as goods that cannot be included stricto sensu in the categories of public goods.[33] Furthermore, they were defined as goods that "suffer a highly critical situation due to their scarcity, depletion and for absolute lack of legal guarantees [and as] *things that express utilities that are functional to the exercise of fundamental rights and functional to free personal development*, and they are characterized by the principle of intergenerational safeguard of their utilities"[34]. The very innovative point, as is worthy of notice, is the definition of the commons in terms of their necessity for the exercise of the fundamental rights of the individual. In this regard, the Commission affirmed that, given this connection with fundamental rights, the enjoyment of the commons must be granted to everyone, *irrespective of the ownership regime within which they exist*, i.e. irrespective of the fact that they are in public or private hands. The Commission formulated this concept with the expression "diffuse ownership" and, as it can seen, this assertion is particularly interesting for the question we have been attempting to answer in this last paragraph. Indeed, we saw how agricultural land is an essential natural resource for human life and, we can say, for the exercise of some fundamental human rights. These include the right to food, the right to a healthy environment, and the right to water, to name but a few. Therefore, in light of this assertion, can agricultural land be included in the taxonomy of the commons, in accordance with the formulation of the Rodotà Commission? Indeed, it seems *prima facie* that agricultural land responds to all the requisites identified by the Commission to be deemed as a common: it is an increasingly scarce asset [35], it has to be managed in a sustainable way so as to make it available also for future generations and, most of all, it is an asset which is necessary to produce food and to store carbon, so we can say it is essential for the exercise of the fundamental rights of the individual. However, a critical point still remains: how to deal with the element of "diffuse ownership"? That is, how to grant the enjoyment of agricultural land to everyone, *irrespective of the existing ownership regime*? The nodal point seems to lie in what meaning we should attribute to the term enjoyment: what are the boundaries of the enjoyment of, say, a privately-owned farmland by a person who considers it as necessary to exercise

29 Cf. in particular art. 42, 44 of the Italian Constitution. See also; GERMANÒ, A., *Manuale di diritto agrario*, Giappichelli, Torino, 2016. On the issue of agriculture and the commons in Italy see LUCIFERO, N., *Proprietà fondiaria e attività agricola. Per una rilettura in chiave moderna*, Giuffrè, Milano, 2012; GERMANÒ, A. and VITI, D. (eds.), *Agricoltura e «beni comuni»*. Atti del Convegno IDAIC (Lucera, 27-28 ottobre 2011), Giuffrè, Milano, 2012.

[30] Cf. *idem*.

[31] In 2007, the Commission was designated by the Government to draw up a reform scheme for the Italian civil code (dated 1942 and quite obsolete in some of its parts) in the part regarding public goods. The reform scheme remained a dead letter. Now in 2019, ten years later, a popular legislative proposal is aiming to re-launch this reform scheme.

[32] While I am writing, an extensive campaign for the collection of signatures among the population is being carried out, so that the legislative proposal can be presented to the Italian Parliament. According to the Italian constitution, at least 50,000 signatures are required for popular legislative proposals.

[33] The Commission identified the commons in "all the natural resources, such as the rivers, the streams, the lakes and the other water resources; the air; the parks, the forests and woodlands; the mountain areas of high altitude, glaciers and eternal snows; those coastlands declared as natural reserves; the wild fauna and protected flora; the other protected landscape areas. Even archeological, cultural and environmental goods are included".

[34] Rodotà Commission (Commissione Rodotà), "Relazione per la modifica delle norme del codice civile in materia di beni pubblici", 14 June 2007. Available at https://www.giustizia.it/giustizia/it/mg_1_12_1.wp?facetNode_1=0_10&facetNode_2=0_10_21&previsiousPage=mg_1_12&contentId=SPS47617, p. 6 (my italic, my unofficial translation).

[35] The phenomenon of land loss and consumption is an increasingly dramatic problem in Italy, as officially reported by the ISPRA Report (Superior Institute for the Environmental Protection and Research), *Consumo di suolo, dinamiche territoriali e servizi ecosistemici* - Report, 2018, available at http://www.isprambiente.gov.it/it/pubblicazioni/rapporti/consumo-di-suolo-dinamiche-territoriali-e-servizi-ecosistemici.-edizione-2018

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their fundamental rights? These inquiries surely need much more space than is available in this paper. Up to this moment we cannot say that agricultural land is a common according to our definition. However, I believe that the formulation expressed by the Rodotà Commission could surely provide some hints for a change of paradigm, especially if it becomes codified law in the near future.

VI. Conclusions

Initiatives of sustainable and ethical agriculture from civil society are increasing in Italy, and Arvaia and GAT are two significative examples of this trend. These and similar initiatives have embraced a new idea of farming which, in addition to the mere production of food *tout court*, attempts to include a wider range of related issues and activities. Social inclusion, enhanced participation of the final consumers in the choices of the farm, related projects regarding sustainable and renewable energies and cultural initiatives, are just a few of the aspects that this new concept of farming has endorsed. What we have tried to demonstrate is how these aspects resemble and express very much the core features of the theory of the so-called commons. A *holistic* approach to farming, the consideration of the community of reference as principal stakeholder in the management of agricultural land and the concern for the welfare of future generations are all aspects that constitute the backbone of the theory of the commons and which are all present in the case studies we have considered. However, the most critical point is the rejection of the public-private dichotomy, which is probably the main feature of the category of the commons. We have seen how this feature creates prima facie some hurdles if we were to consider agricultural land as a common. However, we can conclude this paper with an interesting and timely contribution by the Rodotà Commission, which defines the commons *in terms of their aptness to exercise the fundamental rights of the individual*. This innovative definition, we argue, could open the path for a new categorization and conception of the good "farmland", which could potentially be included within the taxonomy of the commons.

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AGRICULTURAL SOIL AND AGRICULTURAL LAND – – PROBLEMS AND CHALLENGES FROM THE VIEW OF LEGAL REGULATION

POĽNOHOSPODÁRSKA PÔDA – – PROBLÉMY A VÝZVY Z POHĽADU PRÁVNEJ ÚPRAVY

Martin ILLÁŠ*

I. Introduction

The basic term of the conference is the protection of agricultural land. This term can be divided in the physical protection of the agricultural soil and the legal protection of the agricultural land as an object of legal relations. The sense of these two aspects of protection is preserving the productive functions of the agricultural land.

II. Material and Methods

This paper is a technical description focused on identification of the basic terms, basic problems and basic goals and challenges of the protection of agricultural land in the Slovak Republic. It could possibly serve as a support for an attempt to resolve the defined problems by the legislative means. This paper is not aimed at identifying the economic measures of resolving the identified problems, which are equally important like the legal measures.

Most of the definitions, data and possible legislative solutions mentioned in the text are primary based on the documents elaborated in the legislative process of the Act No. 140/2014 Coll. on Acquisition of Ownership of Agricultural Land and on Amendments to Certain Acts, as amended, and its later not adopted amendments drafts, prepared in the Ministry for Agriculture and Rural Development of the Slovak Republic. As a secondary source, the documents of the infringement procedure against the Slovak Republic No. 2015/2017 regarding the possible violation of the Treaty on the Functioning of the European Union were used.

III. Basic terms and relations

Public discussion concerned on the protection of agricultural soil and land is significant with one big problem – misconception and misuse of the terms used in argumentation. In order to achieve the aim of this work, it is needed to define these basic terms and basic relations.

Agricultural soil

Agricultural soil is a part of the environment. As a horizontal phenomenon or horizontal layer, it is an objectively existing part of the earth's surface, i.e. the pedosphere. The agriculture soil is one of the basic means of production, beside the capital

Abstract (EN)

At present, the issue of agricultural land protection resonates in a wide range of scientific disciplines. Individual approaches to the subject are in line with the relevant field, but the basis should always be grounded in the current legislation. The paper is a technical description focused on identification of the basic terms, relations, problems, goals and challenges and possible legal or legislative solutions of the physical protection of the agricultural soil and the legal protection of the agricultural land as an object of legal relations in the Slovak Republic. Achievement the goals and their legal realisation is possible only if certain legal obstacles are resolved on the national level and level of European Union. This paper represents a basic analysis, which can possibly serve as a support for an attempt to resolve the defined problems by the legislative means.

Keywords (EN)

agricultural land, land ownership, land use, landgrabbing

Abstrakt (SK)

Problematika ochrany poľnohospodárskej pôdy v súčasnosti rezonuje v širokom spektre vedných disciplín. Jednotlivé prístupy k danej téme zodpovedajú príslušnej sfére, avšak základ by mal vždy vychádzať z platnej legislatívy. Príspevok je technickým popisom zameraným na identifikáciu základných pojmov, vzťahov, problémov, cieľov a výziev a možných právnych alebo legislatívnych riešení fyzickej ochrany poľnohospodárskej pôdy a právnej ochrany poľnohospodárskej pôdy ako objektu právnych vzťahov na Slovensku. Dosiahnutie týchto cieľov a ich právna realizácia je možná len vtedy, ak sa na národnej úrovni a úrovni Európskej únie vyriešia určité právne prekážky. Príspevok predstavuje základnú analýzu, ktorá môže slúžiť ako podporný materiál pri pokuse o vyriešenie definovaných problémov legislatívnymi prostriedkami.

Kľúčové slová (SK)

poľnohospodárska pôda, vlastníctvo pôdy, využívanie pôdy, zabratie pôdy

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and work. Unlike the capital, the agricultural soil is a non-renewable, non-repairable and non-transferable means of production. And unlike the capital, the agricultural soil itself cannot be an object to ownership.

Agricultural land (agricultural land estate)
The agricultural land is a legally defined portion of the earth's surface determined by the parcel line which is covered with agricultural soil and is included in the so called "agricultural soil fund". It can be an object to ownership.

The agricultural land as any other estate is beside its horizontal sense also a vertical phenomenon because as an object of the ownership right it involves the whole space under the surface including the agricultural soil. It means that agricultural soil is a part of the agricultural land, it is its attribute and it is also the criterion of the value of the land (estate).

The agricultural land has several types - arable land, permanent grassland, garden, orchard, vineyard and hop-field[(1)].

Ownership
Ownership is one of the basic human rights. As a human right, it is imprescriptible, inalienable, perpetual and irrevocable. As a basic right, it belongs to any natural person and also to any legal entity. Ownership means to own the object of the ownership, it means the right to dispose, the right to hold and right of usufruct. In connection with the liberty of contract, the ownership also means a right to acquire and to transfer the property. Ownership does not mean only the "right" to own a thing but also the "liability" for and to the object of the ownership.

Usage or usufruct
The right to use (usage) and the right to derive profit from the object of the ownership (usufruct) are the parts of the ownership right. Both of these two rights can be transferred to other person – a user, a tenant.

State territory and state sovereignty
It is often argued that the outflow of the agricultural land ownership out of the state territory may endanger the state sovereignty. A state territory is a part of the earth's surface and the space above and below it, where the state exercises its sovereignty and determines the rules. It is a legally defined phenomenon. The state territory does not mean the state property. The state territory is not the object of the state's ownership. It is an area with many different private owners and users. The state territory cannot be endangered by private ownership of land, because the land is not transferrable out of the state territory and remains under the rules and laws adopted by the state.

State sovereignty means the inviolable right of the state to determine the rules in the state territory. It also includes the right of the state to transfer part of its rights and accept obligations. Similarly to the state territory, nor the state sovereignty can be endangered by private ownership of land, because the state is the only entity able to determine the rules and laws in this territory.

(1) § 2 letter b) of the Act No. 220/2004 Coll. on the protection and use of agricultural land and amending Act No. 245/2003 Coll. on integrated pollution prevention and control and on amendments of certain acts, as amended.

Commodity
A commodity is a thing, which is the object of ownership and therefore it is the object of property transfer. A commodity is any legally and economically valuable and usable thing. This means that agriculture soil cannot be a commodity, because it is not a separate and autonomous thing. On the contrary, the agricultural land is a commodity because it is a legally defined thing and object of the ownership.

Market
Market is a system of relations where the exchange of commodities takes place. Market is essentially open and free. The owners of the agricultural land realize their ownership and their liberty of contract on the market. The object of the market is not the agricultural soil but it is the agricultural land.

Farmer
A farmer is a person operating on the agricultural land as a producer or processor of primary products. The farmer can be a natural person or a legal entity, an undertaker or non-undertaker and owner or user of agricultural land.

Food safety and food self-sufficiency
Food safety can be defined as the ability to provide enough food for the population. It is the essential role of the state. It does not matter from which source the food is acquired, i.e. whether from the domestic or foreign sources.

Food self-sufficiency can be defined as the ability to ensure food safety at a local, regional or national level from its own, it means domestic sources.

Legal and economic environment
Legal and economic environment is created by the set of rules governing the acting of all entities. It is determined by the Constitution and other national laws and orders, by the international treaties, obligations and rules especially adopted by the United Nations Organisation, World Trade Organisation and the European Union with European Economic Area.

IV. Problems identification

The loss of agricultural soil
The most significant trend in the present situation of the agricultural soil protection is continuing change of the agricultural land for other purposes than agriculture, i.e. changing the agricultural land in other types of land or by overgrowing with the forests. This change may be temporary or permanent, intentional or spontaneous, irreversible or reversible. This trend is characterized by very intensive regional differences. It is an accompanying phenomenon of the growth in other sectors of the economy (mainly building industry and transport) and by the agricultural crisis manifested mainly by abandoned and uncultivated land.

Low price of agricultural land, low competitiveness of domestic farmers and inequality in the land-market
The agricultural land in the Slovak Republic has a very low price. The average asking price is 85 cents per square meter, but most of the agricultural land has price lower than this av-

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erage price. The annual growth of agricultural land price is about 4%. There is no price regulation of agricultural land in the Slovak Republic. The reason is mainly the strong refusal of domestic farmers. As an example of price regulation can serve Germany where the rule of sale price regulation is based on the limit +/- 50% of the market price. The agricultural land in the Slovak Republic is despite of its low price relatively too expensive for domestic farmers who are mostly unable to buy it. On the contrary, the foreign farmers and foreign or domestic non-agricultural entities that are more solvent are able to offer higher prices because the agricultural land is relatively cheap for them. Regarding to the fact that every owner prefers a higher sale price, it is logical that if the more solvent buyer offers only a slightly higher price he will buy the land. Therefore, the solvent entities in the market have a natural predominance. They are not forced to significantly increase the price of land because the competition of the domestic farmers is weak.

The second aspect of this problem regards the owners who sell the agricultural land. The selling owners generally do not have any market price survey and therefore they do not know what price they could ask. The solvent buyer may use this fact and may offer any price, even lower than is the market price.

Landgrabbing

The problem of the so-called landgrabbing, which is intensively discussed in the European Union has two negative forms: concentration of the land-ownership and outflow of the land-ownership.

Concentration of the agricultural land ownership means the accumulation of the agricultural land ownership into the hands of a small number of owners, especially those who are not farmers or farming is not their main activity. The concentration may result into the exclusive ownership or into the majority ownership share of the agricultural land.

The ownership concentration into the hands of the foreign owners is not so far a dominant problem in the whole country. It is intensively growing only on a local level (several districts with the most quality agricultural land). The ownership concentration is the dominant problem in case of large domestic companies and their owners, more precisely their final beneficiaries: only about 30 final beneficiaries own in average 10 thousand ha of agricultural land (it means together up to 300 thousand ha).

The main intent of the entities concerning the agricultural land into their ownership is depositing the capital into the agricultural soil as one of the means of production. The risk or disadvantages of the concentration of the agricultural land-ownership can be summarized into these points:

a) investing in agricultural land often without any interest in farming,
b) outflow of the capital produced in agriculture into the other sectors,
c) disturbing the access of the smaller farmer to the agricultural land as a means of production,
d) determining the market price of agricultural land,
e) determining the price of rent to the competitor´s disadvantage,
f) deepening the inequality of market participants,
g) devaluation of the minority share in the case of the land co-ownership.

Outflow of agricultural land-ownership from the Slovak Republic means the dominant position of the foreign buyers of the agricultural land in the land-market. It is a logic outcome of the open and free land-market in the European Union, European Economic Area and the World Trade Organisation and of the low prices of agricultural land, low competitiveness of domestic farmers and inequality in the land-market.

The buyer of the agricultural land is usually an economically stronger entity from abroad especially foreign farmer or foreign bank, holding or other non-agricultural subject. The exact scale of their foreign ownership is not known because no official register operating with the origin data of the owners exists, especially regarding the legal entities. Only empirical data and estimates are available: about 30 to 150 thousand ha of agricultural land is in ownership or in usage of the foreign entities. In some districts with the most quality agricultural land, the scale of the foreign ownership or usage rises up to or over 50% of the total agricultural land area. In the case of the foreign farmer, the ratio of the ownership and usage of the agricultural land is usually 1:3 of the whole operated area of this farmer.

Among the foreign farmers, the entities from Netherlands, Denmark and Austria dominate as the foreign owners of the agricultural land.

Outflow of land-ownership from the Slovak Republic has its advantages and disadvantages. The advantages may be summarized into these points:

a) inflow of finances (foreign capital, foreign investing),
b) consolidation of ownership instead of ownership fragmentation,
c) the foreign farmers are in general very disciplined farmers,
d) higher employment,
e) impulse for the local domestic entities taking part in the agri-food complex.

The disadvantages are the same as in the case of the concentration of the agricultural land-ownership; the outflow of the produced capital out of the Slovak Republic may be added.

In case of outflow of land-ownership, the domestic farmers are the group, which is affected by the negative impacts. It is important that there are similar problems concerning landgrabbing across the European Union, for example in Romania and Bulgaria (where the level of foreign ownership of the agricultural land in the scale of the whole country moves around 50% of the total agricultural land area) but also in East Germany [(2)].

In the Slovak Republic, the landgrabbing is up to now not such a significant phenomenon, because there is a natural self-regulation factor - the huge fragmentation of the agricultural land ownership (see below).

The risk of concentration in the agri-food complex

Concentration of the land-ownership on a local, regional or national level causes a risk of disturbing of the alimentary chain or the so-called agricultural-food complex (agri-food complex). It means that the individual stages of the agri-food chain, i.e. producer, processor, supplier and seller, may get

[(2)] Heubuch, Haerlin, Fuchsloch (2016)

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concentrated in one legal entity or in a group of several connected legal entities. The result of the concentration in the agri-food chain is disqualification not only of those entities that are not able to effectively participate in the land market but all smaller or domestic farmers. These disqualified smaller or domestic farmers either liquidate or become dependent on dominant entities. This process has its consequence in the crisis of domestic food production and in the collapse of food self-sufficiency.

Fragmentation of land ownership

One of the most important problems of the Slovak agriculture is the extreme fragmentation of land-ownership and complexity of ownership structure of agricultural land. First reason is the duplicity of land-registry: the so-called "C register" as a binding register but often without real ownership relations and the so-called "E register" as non-binding but real-owned and transferred (the "E register" contains the pre-socialist parcel structure).

The second and essential reason is the ownership-fragmentation itself. In the Slovak Republic, there is approximately 1.9 million ha of agricultural land (another 400 thousand ha are presented by the areas which are not correctly registered or are dubious). This area consists of approximately 4.5 millions of parcels. One parcel has in average 0.4 ha. One parcel is in average owned by 11 co-owners. One owner of agriculture land is in average co-owner on 20 different parcels. In extreme cases - the so-called "land-associations" (total number of these entities is over 2800) - the land is owned by hundreds or thousands of co-owners (in some cases around 3100). These "land-associations" or "compossessorates" cover both the agricultural and forestland with total area around 475 thousand ha with up to 1 million owners.

The third reason of the ownership fragmentation is the ongoing trend of fragmenting the parcel or ownership share down to the minimal 2000 square meters limit.

The fourth reason is the persisting ownership of the unknown owners. Their ownership is protected by the Constitution as any other ownership, although the owner registered in the cadaster is not known or the owner is not registered at all. This property is held in the hands of the state administrators. The total area of the agricultural land in ownership of the unknown owners is up to 300 thousand ha. It is a negative factor especially in the cases where the unknown owner is the co-owner with not a negligible or even half or majority share together with the "known" owner or owners.

This complicated situation is despite its negative consequences on the other hand a natural barrier to a more dramatic outflow of land-ownership and to the concentration of land-ownership. In the discussion concerning the ownership-fragmentation, also the reason of the so-called "Hungarian inheritance" is often mentioned. However, it is a misconception arguing that in the Slovak Republic the so-called historical "Hungarian inheritance" survives till nowadays instead of the more modern "Austrian inheritance".[3] It is true that in the old Hungarian law the heritage after the father was inherited by all his adult sons what led to more and more fragmented land-ownership. According to the historical Austrian law codified by the Civil Code in 1811, the heritage after the father was inherited only by the oldest adult son. But it is very important to realize that at latest from 1948 when the Universal Declaration of Human Rights was adopted at the United Nations Organisation, the right of succession including the estate of inheritance is guaranteed to everybody without any difference based on age or gender. This conception of heritage is accepted in Austria as well as in the Slovak Republic or Hungary. By the way, the Czechoslovak Civil code was adopted in 1950 and a new one in 1964. Both of these two Civil codes contained the same system of inheritance which substituted all earlier rules of inheritance without any regard if they were Austrian or Hungarian.

Complexity and non-clarity of relations in usage of the agricultural land

The indirect result of the fragmentation of land-ownership is the fact that up to 95% of farmers manages the rented agricultural land, not on their own land. In fact, the farmer does not need to own the agricultural land in order to manage it, but he needs only to use it (it means to farm). Therefore the farmer is dependent on the availability of rentable land and the price of rent. Consequently, a small farmer is threatened by other farmer who owns a large plot of land. This negative phenomenon is strengthened by the concentration of the land-ownership. The relations of using the agricultural land provided by the Slovak law are extremely complicated: there are at least eight different titles of land-use - rent, sublease, "sub-sublease", administrative decision on the sublease, dealing plan, simple dealing plan, rent *ex lege* and various types of common using treaties and rent by the minority co-owners.

The fragmentation of land-ownership has another negative influence on the land-usage system: it results in more than 45 million potential relations of land-use (compare the number of 5.44 million of inhabitants in the Slovak Republic).

The risk of concentration of land-use

A phenomenon very similar to the concentration of the land-ownership caused by inequality in the land-market is present also in land-use. The concentration of land-use means the accumulation of agricultural land usage in the hands of a small number of dominant farmers who are tenants on the large area of agricultural land rented from a large number of the land owners. The mechanism of the concentration of land-use is very similar to the mechanism of concentrating the land-ownership. The dominant farmers (domestic or from abroad), which are solvent, are able to offer a higher rent. Every owner prefers to get a higher price of the rent; therefore the dominant farmer has predominance in usage of agricultural land.

As the result of the land-use concentration, about at least 500 to 700 (maybe up to 1000) from approximately 17 000 farmers in the Slovak Republic use 80% of agricultural land. The rest 16 000 subjects use only 20% of agricultural land. The basic area limit of profitable farming as undertaking is about

[3] Till 1918 the territory of Slovakia was a part of Hungarian Kingdom. After 1918 the Hungarian law was preserved and the new Czechoslovak law system started to be unified. This process lasted almost till the end of the 20th century. The last Hungarian "law articles" were derogated in 1995.

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180 ha of managed agricultural land (the basic volume moves between 150 and 200 ha). This has an important impact on the distribution of the direct payments and other types of aid in agriculture because the real farming, i.e. the real use of agricultural land, is the criterion for direct payments in agriculture. Therefore only 500 to 700 farmers get 80% of direct payments and the rest 16 000 farmers get the rest 20% of payments.

Inequalities between the European Union member states

The very negative factor of the Slovak agriculture and management of the agricultural land and one of the basic reasons of the low competitiveness of domestic farmers is the inequality in the direct payments and other types of aid in agriculture between the "old" and "new" member states of the European Union. When joining the European Union in 2010, the "new" member states had to agree only with 40% share of the payments in agriculture compared to the "old" member states.

V. Goals and challenges

The identification of the basic problems of the protection of agricultural land and all the related difficulties implies the formulation of the main goals and challenges in finding the most suitable solutions. These aims are:

a) increasing the agricultural soil protection in order to preserve the present area of agricultural land,
b) conservation and strengthening the domestic agriculture-food complex, i.e. to assure that the agri-food chain (producer - processor - supplier - seller) is as much as possible occupied by domestic entities,
c) increasing the competitiveness of domestic farmers in the agricultural land market, i.e. to increase farmers' access to agricultural land ownership and to assure that domestic farmers have more free financial resources to buy agricultural land,
d) ensuring easier and more straightforward farmers' access to agricultural land use,
e) stopping the concentration of agricultural land ownership,
f) stopping the outflow of agricultural land ownership out of the Slovak Republic,
g) ensuring the food self-sufficiency.

VI. The possibilities of legal solution

Rationalization of land-ownership

It is needed to establish the rational structure of the land-ownership. In order to avoid further fragmenting of the agricultural land and ownership relations, it is needed to reform the fragmentation limits. The solution may be either increasing the limits of fragmenting parcels and ownership shares or even prohibition of the fragmenting only with certain exceptions. Breaching of these rules should be sanctioned by absolute nullity of the legal act.

Another legal measure aimed at the rational ownership structure may be liquidation of ownership of the unknown owners. This cannot be done by annulling their ownership because it is protected by the Constitution. Part of this problem may be resolved by the land consolidation which may lead to reduction of the property of the unknown co-owners where it presents a burden of land ownership of the "known" co-owners. The general solution may be achieved by more flexible disposal with this property by the state administrator but here it is needed to assure that this agricultural land will not became the subject of landgrabbing. Therefore, the releasing of the disposal with this property may be counter-productive. On the other hand, the fact that the state administrator holds a large area of the agricultural land including the land of the unknown owners and the state land property (round 160 thousand ha), increases the possibility of the state to support the smaller farmers and to regulate the market price of the rent. In fact, the basic measure which is able to achieve this aim is the land consolidation; it means the re-parcelling and arrangement of ownership relations to land. This measure is able to reduce also the problem of the unknown owners, the problem of the duplicity of "C" and "E" register of the cadaster, the problem of the "land-associations" and also the problem of incorrectly registered and dubious data in the cadaster.

In order to achieve the transparent and clear relations in agricultural land ownership and usage it is needed to create the special cadastral *operatus* (documentation) of the owners which could allow to search the real estate by the owner, not only by the land. This database should be linked with the register of the final beneficiaries in order to reveal the hidden connections especially between the dominant land owners concentrating the agricultural land ownership.

Rationalization of land-use

The complicated system of agricultural land usage can be solved by these three measures:

a) the land consolidation which will ensure the direct access to every parcel and will reduce the inequality of the majority and minority co-owners with their different interests and parallel rental contract,
b) reducing the existing types of usage-titles (only rent, sublease, administrative decision on the rent and common using treaty),
c) the rental contract only by decision of the majority of the co-owners.

In order to achieve the transparent and clear relations in usage of the agricultural land it is needed to create the register of the land-use relations, i.e. identification of the user, the title of use and its duration, which will be connected with the cadaster.

An alternative measure may be the regulation of the rent price which is provided by a special regulation since 2018[4].

Agricultural-soil protection as a public interest

The protection of the agriculture soil as the part of environment and the basis for any food production must be the primary criterion for any management of agricultural land. Since 2017, the Constitution established the state's care and special protection for the agriculture land, which is characterized as

[4] Regulation of Ministry for Agriculture and Rural Development of the Slovak Republic No. 172/2018 Coll., which lays down details on the manner and extent of keeping and providing records and determining the usual rate of rent.

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a non-renewable nature source.[5] However, this constitutional regulation yet has not emerged in some specific legal regulation.

For any change of the agricultural land to other type of the land, there should be always paid a fee without any exceptions which are today very often. Instead of remissions of the fees, there should be applied only reducing of the fee. In specified cases, a total prohibition on change of the agricultural land to another type of land should be provided. The financial resources gained from these fees should be invested back in the agricultural land protection. Changing the agricultural land to the other types of the land, especially to the building land, should be primarily limited to changing the land with degraded soils and on the sites with old environmental burdens, which need to be eliminated. Placing the large area industry buildings and factories should by primarily realised in urban areas, in old unused industrial sites, on the land with degraded soils and sites with old environmental burdens.

The environmental and rational practices in operating and cultivating the agricultural land should be supported by legislative means, for example:

a) to conserve and build the balks and alleys as windbreaks and as means of water retention,
b) to leave waterlogged and otherwise unproductive areas as natural refuges for the organisms which could serve as natural means of protection against the pests,
c) ploughing should be realised always across the fall line of the slope.

Modelling the ownership and agriculture land market

In order to reduce the problem of landgrabbing, i.e. the risk of concentrating the ownership and outflow of the ownership out of state, it is needed to model the rigid protection of the ownership right. The fundamental condition for this modelling is the amendment of the Constitution and its provisions protecting the ownership right.

One of the legislative measures of modelling the ownership right may be establishing the area limits of the land ownership; it means to state the maximum possible area of the owned agriculture land. These limits should be different for particular types of owners, for example the natural person, the natural person as undertaker, the legal entity and the group of interconnected legal entities.

Another measure of modelling the ownership right may be establishing the system of pre-emptive rights. However, some versions of this system may be counter-productive, especially the pre-emptive right of the owner of neighbouring agricultural land or of the tenant. These pre-emptive rights could lead to further concentration of ownership. Much more effective could be the system of pre-emptive right of the public entities like the state or municipalities.

In the specific case of the majority co-owner it may be possible to order him the obligation to buy out the minority shares what should be the prevention of the devaluation of the minor co-ownership shares.

In order to prevent outflow of the ownership out of the state through the legal entities it may be provided the limitation or prohibition of depositing the agricultural land as a non-monetary deposit into a business company. In every case, there should be an obligation of the owner to ensure management and productivity of the agricultural land.

Collective action of farmers

As a measure of the collective sharing the risks and benefits of smaller or domestic farmers as owners or users of the agricultural land, it should be supported foundation of their cooperatives, sales associations, venture funds, sector-organizations and other similar forms of collective dealing. This cooperation should serve as the initiative protection against all demonstrations of the landgrabbing and against the inequality in the market. These activities are possible also today but they need more progressive support by the state.

Achievement the goals and their legal realisation is possible only if certain legal obstacles on the national and European level are resolved.

Constitutional obstacles

The Constitution of the Slovak Republic guarantees the ownership right in maximum wide range only with several specific exceptions reasoned by the public interest. [6] The constitutional provisions does not allow to:

a) limit the size of the land owned,
b) give preference to some entities in acquisition of land ownership,
c) prohibit the deposit of the land into a business company.

These obstacles could be eliminated by qualifying the protection of the agricultural soil and land as the public interest and by explicit modulating the ownership right in case of agricultural land with emphasising the liability component of the ownership right.

International legal obstacles

The legislation of the European Union does not allow restrictions in the agricultural land market. The agricultural land market is a part of the common market of the European Union, which is protected by the principles of free movement of capital, freedom of establishment and prohibition of not allowed state aid.

The European Commission faces several legislative attempts of the new member states of the European Union including the Slovak Republic to regulate the agriculture land market. These state use methods that are not conform to the law of the European Union and to the methods recommended by the European Commission. The methods recommended by the European Commission are:

a) pre-emptive right of the tenant,
b) price regulation of the agricultural land,
c) transfer tax,
d) uniform conditions of access to the agricultural land market,
e) minimum rent duration.[7]

[5] Art. 44 par. 4 and 5 of Act No. 460/1992 Coll. The Constitution of the Slovak Republic as amended.

[6] Art. 20 of Act No. 460/1992 Coll. The Constitution of the Slovak Republic as amended.

[7] Commission Interpretative Communication on the Acquisition of Farmland and European Union Law (Official Journal of the European Union, 2017/C 350/05).

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As it was mentioned above, several of these methods were actually used in the Slovak Republic [d) and e)] but several of them were dismissed and cannot be applied [a), b) and c)]. In the discussion with the European Commission it is often argued that these recommended measures are not able to resolve the actual problems, especially the problem of the land concentration and outflow of the ownership. As a comparative example of using these methods Germany may be mentioned, where all of these methods are applied but they do not solve the problem that is still growing especially in the East Germany. On the other hand, there exists also the totally opposite example – the legal regulation of the agricultural land market in France does not meet the measures recommended by the European Commission at all and is extremely strict, directional and affects the liberty of contract in a very intensive way; despite of this fact, the French regulation is not challenged by the European Commission as a violation of the European Union law.

In discussion with all the EU member states regarding the regulation of the agricultural land market, the European Commission recommended unofficially also to apply these measures:

a) deconcentration of the land ownership,
b) obligatory investment in farming of the land owned,
c) adopting rules against the vertical concentration of the agri-food chain.

These unofficially recommendations of the European Commission are paradoxical because no specific method of their realisation was recommended and, what is more important, all of these measures are in fact in possible conflict with the European Union law, especially in case of obligatory investing of the owner in farming of his land.

Diametrically different view compared to the official statement of the European Commission was presented by the European Parliament, which recommended the member states to use practically all those measures, which were dismissed by the European Commission.[8]

These extreme differences in the opinions of two highest bodies of the European Union testify that the problem of the physical and legal protection of the agricultural soil and land requires wide discussion and essential decision. Actually, only two possible conclusions may be reached: either there will be adopted common legal regulation applicable directly in all member states, or it will be only very general legal regulation and the detailed rules will be adopted in the national legislation in a very different and individual way.

General strategies

As a general base for all possible legal solution it is needed to adopt some non-legislative actions, which could serve as the political and ideological concept. It could be some kind of a long-term strategy implying two basic thoughts: preserving and revitalizing the cultural landscape and the right of the state and its inhabitants to protect their environment from the negative effects of the free market. Taking in account the high degree of involvement of civil society in public politics, it is obvious that all attempts leading to solution of the problems mentioned above must have the public support; that can be secured only if the citizens understand and accept the actions resolving the problems.

[8] European Parliament resolution of 27 April 2017 on the state of play of farmland concentration in the EU: how to facilitate the access to land for farmers.

VII. Conclusions

The paper defines basic terms and relations important for the involved topic: agricultural soil, agricultural land, ownership right, right to use (usage), state territory, state sovereignty, commodity, market, farmer, food safety, food self-sufficiency and legal and economic environment. As the main problems of the agricultural land protection were identified the loss of agricultural soil, low price of agricultural land, low competitiveness of domestic farmers, their inequality in the land-market, landgrabbing (manifested by concentration of the agricultural land-ownership and outflow of the land-ownership), concentration in the agri-food complex, fragmentation of land ownership, complexity and non-clarity of relations in usage of the agricultural land, concentration of land-use and inequalities between member states of the European Union. The definition of the goals and challenges is aimed at resolving the basic problems, i.e. to increase the agricultural soil protection in order to preserve the present area of agricultural land, to conserve and strengthen the domestic agriculture-food complex (producer – processor – supplier – seller), to increase the competitiveness of domestic farmers in the agricultural land market, to ensure easier and more straightforward farmers' access to agricultural land use, to stop the concentration of agricultural land ownership and outflow of agricultural land ownership out of the Slovak Republic and to ensure the food self-sufficiency. These goals can be achieved by several possible legal or legislative solutions in several ways. First and essential legislative measure is rationalization of land-ownership which can be achieved by reforming the fragmentation limits, liquidation of ownership of the unknown owners, realisation of the land consolidation and by transparent and clear ownership relations in cadaster. Rationalization of land-usage can be achieved also by the land consolidation together with reducing the existing types of usage-titles, by concluding the rental contract only by decision of the majority of the co-owners and by creating the specific register of the land-use relations. Physical protection of the agricultural-soil protection should be codified as a public interest with strict rules of changing the agricultural land to other type of land always with paying a fee without any exceptions and with prohibition of changes in specific cases. To avoid the landgrabbing in all of its demonstrations, it is possible to model the ownership and agriculture land market by certain limits of the ownership right. As a private and initiative measure of protection against the inequality of the small and domestic farmers it is needed to support collective organising the farmers. The realisation of the possible legal measures requires in some cases to eliminate several obstacles, especially the constitutional obstacles caused by the rigid protection of the ownership right, the international legal obstacles caused by the law of European Union and the absence of any general strategies.

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OBSTACLES IN IMPLEMENTATION OF THE RIGHT TO WATER

IMPLEMENTAČNÉ ÚSKALIA PRÁVA NA VODU

Kristián ČECHMÁNEK*

I. Introduction

Basic human rights often tend to be seen as an existence prior to the positive-legal existence. Although such a perspective successfully captures the humanistic axiom of their irrevocability, indivisibility, indecision and inalienability, on the other hand, it encourages legitimate scepticism challenging the human rights category as such. It can be assumed that supporters of the super-legal fundamental human rights do not want to see the subject of their interest only on paper, with constant reminder that the faith in them is the same as faith in unicorns and witches[(1)], but their ambition is to implement such rights in their feasible form in reality. In other words, they want to ensure that the recipients of such rights have their real performance and, if necessary, enforcement.

In the paper, we will address the third generation of human rights, namely the right to water. Our interest is mainly due to long-term unfulfilled wishes and endeavours to establish such a right in the social reality, despite the positive will and proactive attitude of global players (superpowers, international and multinational organizations, etc.). The aim of the paper is to delimit the boundary between the wanted and the possible, between the normative initiative and the practical obstacles of ensuring the right to water, in the context of public-private cooperation in the provision of water services.

For this purpose, we decided to split the paper into four sections. In the first part, we briefly outline the genesis of the third generation of human rights with reference to their intergenerational interdependence and their content diversity. The second part is devoted to water as a value that is a key aspect of the right to water. The subject of this section is Kofi Annan's reasoning, which explicitly stated the reason for accepting the right to water as a fundamental human right. The following section gives us the opportunity to review the legislative and political efforts to secure the right to water, although, as we will see below, despite of clearly formulated goals and standards, they do not yet bring the desired effect into practice. It is the practical implementation of the legislative will that is most interesting to us, and therefore in the last part we define the practical difficulties of implementing the right to water under the controversy over whether the currently preferred public law model of water services can ensure the true content of the right to water.

II. The Third Generation of Human Rights *in abstracto*

It has been more than 40 years since the important French legal (not only) Czech origin theorist Karel Vašák proposed to understand human rights within 3 generations. The first generation of such a division can be understood as the civil and political rights that arose from the International Covenant on

(1) Macintyre (2007)

Abstract (EN)

The paper discusses the right to water as an integral part of a third generation rights in terms of its feasibility. The author tries to point out the need of participation of the private sector in solutions for effective elimination of indisputable humanitarian crisis in the world caused by scarcity of the clean water and most importantly by inadequate access to clean water sources. A long time struggle towards fighting poverty and ensuring basic need for life only by means of official authorities proves that despite indisputable political and normative progress, states consistently fail in meeting demands of implementation. Therefore the author emphasizes the necessity of cooperative action of a private sector and public sector stemming into a participative solution.

Keywords (EN)

third generation of human rights, right to water, human rights, access to clean water

Abstrakt (SK)

Nasledujúci príspevok pojednáva o práve na vodu ako integrálnej časti tretej generácie ľudských práv v súvislosti s možnosťami jeho praktickej realizácie. Autor sa vo svojom príspevku snaží zdôrazniť potrebu účasti súkromného sektora na dosiahnutí efektívneho odstránenia neoddiskutovateľnej globálnej humanitárnej krízy spočívajúcej v nedostatku čistej vody, ako aj a predovšetkým nedostatočnom prístupe k zdrojom čistej vody. Dlhodobé snahy boja proti svetovej chudobe a nedostatku realizované výlučne verejnoprávnymi aktérmi ukazujú, že aj napriek významnému politickému a normotvornému progresu štáty naďalej zlyhávajú v reálnej implementácií opatrení na zabezpečenie zlepšenia. Autor vzhľadom na uvedené prízvukuje nevyhnutnosť spolupráce medzi verejným a súkromným sektorom ústiacej do spoločného riešenia.

Kľúčové slová (SK)

tretia generácia ľudských práv, právo na vodu, ľudské práva, prístup k čistej vode

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Civil and Political Rights. The freedom of expression is a typical representative of the catalogue of rights and freedoms of this international treaty. Within the second generation, Vašák identifies economic, social and cultural rights captured primarily in the International Covenant on Economic, Social and Cultural Rights and it is characterized, for example, by the right to work or the right to the fair and satisfactory working conditions[2]. The third and last generation are the so-called rights to solidarity whose addressees are collectives rather than individuals. Such rights include, for example, the right to an acceptable environment, right to sustainable development, etc.[3] For the sake of completeness we need to mention that Vašák's theory is often criticized, especially because of the unclear definition of the timeline of generational development of individual human rights, since the author initially considered the acceptance of the Universal Declaration of Human Rights in 1948 (followed by the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights of 1966) as the starting point, but later he significantly changed the chronology and as the key moment for the formation of the three-generation system he considered an event, which is philosophically, as well as historically different, and it was the French Revolution in the context of its slogan Freedom, Equality, Fraternity [4]. In spite of legitimate criticism, the theory of three-generations of human rights retains a fairly solid position and credibility, which is also evident in its acceptance by the leading scientific journals such as the Human Rights Quarterly. Therefore, we will use the theory of three-generations of human rights as a theoretical framework for the analysis, as we consider it not only widely accepted, but also comprehensive. In other words, the concept of the three-generation system of human rights provides a significant communication advantage, which makes it unnecessary to devote too much space to the description and definitions of individual generations. Contrary, we can immediately move to the subject of our work, the third generation of human rights. But before that we return to the set of three-generations for a moment.

An important aspect of the generation triad is a certain sequence that begins with individually-aimed first generation rights, when individuals are addressed. The rights that arose within the long-term intellectual endeavours of classical liberalism and Locke's tradition were later supplemented by others, influenced by the left-wing thought concept, which provided a certain social standard for the citizen. One thing to emphasize is that the social standard is not an exact category, but rather a reflection on the economic possibilities of a particular society, thus its parameters may vary from country to country. Any subsidy scheme is a typical example of this category. Well-known American political and legal philosopher Jeremy Waldron attempted to bring a peaceful narrative to the naturally contradictory relationship between the first two generations of human rights and their inevitable collisions (individual vs. collective). He claimed that the second generation of human rights is a prerequisite for genuine implementation of the civil and political freedom coming from the first generation, as living conditions are a determinant of whether or not to enjoy the fruits of free life. Waldron ended his reasoning with a question that we can formulate as follows: "Why it would be good to deal with the freedom of an individual to choose between option A and B, if such a choice for this person, given the conditions of his life, would not mean anything or would not influence his life in any way?"[5] The described approach of mutual conditionality could certainly be applied to the rights that are the subject of the third generation. There is no need to go far for an example, since environmental issues and sustainable development have just stolen the end of the second decade of the twenty-first century. Thinking analogically, it is worth asking a question: "Can a person live a free life and fully apply fundamental freedoms if he does not have a favourable environment?" Certainly, Waldron would not think so. The correlative logic between individual rights and freedoms, on the one hand, and the quality level of the environment, on the other, is now being profiled as a mainstream of both national and transnational normative practice. Although, we accept the fact that the environmental consequences of the state action are generally cross-border[6] and conceptually it makes no sense to talk about national policies and legislation, we consider meaningful to mention at least some examples from the national practice, which can have, if not crucial then at least inspirational, impact on the development of global environmental legislation and policy.

These days, the European Union is seen as one of the most important environmental players. It is built on the principles of environmental protection and sustainable development. Quoting the article 191 of the Treaty on the Functioning of the EU, the European Union has set itself the following objectives:

- preserving, protecting and improving the quality of the environment,
- protecting human health,
- prudent and rational utilisation of natural resources,
- promoting measures at international level to deal with regional or worldwide environmental problems, and in particular combating climate change[7].

Obviously, the goals are set quite generally, so it will be beneficial to focus on the specific content of the third generation of human rights, which at the same time represents the penetration of all of the European Union's manifested objectives. Let's go to the right to water.

III. The Third Generation of Human Rights *in concreto*

In the previous section, we have briefly outlined the concept of three generations of human rights, while we have drawn our attention to their last generation, represented mainly by the currently extremely popular rights to a favourable environment and sustainable development. As we have already indicated at the end of the previous section, we intend to examine one of

[2] Vasak (1977)
[3] Cornescu (2009)
[4] Jensen (2017)
[5] Waldron (1993)
[6] Sands (2003)
[7] Treaty on the Functioning of the EU. article. 191.

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the most discussed rights of the present – the right to water. At the same time we would like to add that the right to water is still not a fully established right, and there is a lot of controversy about its nature. The tendencies favouring water as a subject of rights are based on the nature of water as a *sine qua non* condition for life[8]. Suitable for this approach is the Kofi Annan's statement that: "Access to safe water is a fundamental human need, and therefore a fundamental human right." According to available literature, the contaminated water caused 80% of all world diseases by 2007 [9]. However, water is not only a significant biological value but also a cultural value. As an example we can mention the ancient philosophers according to who water was "the foundation of being" (Táles) or a metaphor for constant change – the flow (Heraclitus of Ephesus), or the religious symbol of Christian or Hindu for purification[10]. Esotericism and mysticism are not less important cultural impetus, where the value of water is irreplaceable. The renowned Nordic mythology gives the water the magical qualities that have been experienced by Odin himself, sacrificing one eye for a sip from Mimi's well. Water from under Yggdrasil provided Odin with absolute wisdom[11]. From the aforementioned it is quite clear that water is a significant civilization value. In the following text, we will outline the political-legal basis of the right to water, as well as the problems that the establishment of the right to water may currently face.

IV. Right to Water: Normative Basis

A norm establishes what is supposed to be, an ideal reality, which it is desirable to approach and to achieve. The normative language is basically the language of the evaluator, which determines what is good and what is not good. For example, if we say that water should be the subject of fundamental rights, we are implicitly saying that it is both right and good. In the case of an institutional provision of a given standard, its violation, non-compliance or refusal would give the enforcing power the right to redress and secure such a right for its addressees. However, the adoption of a standard does not guarantee its application and does not change social reality. Global players are well aware that a number of deaths, illnesses and unfulfilled or wasted human potentials are due to a lack of clean water, which is a determinant of life per se. However, current normative development has stopped somewhere halfway between the intention and implementation. It is obvious, and quite often heard, that we are experiencing a global drinking water crisis, especially in the inadequate access to water resource caused by various factors, especially power relations and specific decisions by national governments [12]. As it is a global problem, solvable only by a broad consensus, a collective solution is needed. The journey to the right to water began long time ago, but within the context of the human rights agenda only during the twentieth century, for example, in Articles 6, 7 and 10 of the document *„Convention on the law of the non-navigational uses of international watercourses"* from 1997. The provisions of Art. 4, para. 2 of the *Protocol on Water and Health to the Convention on the Protection and Utilization of Transboundary Watercourses and International Lakes* from 1992 may serve as another example. The Stockholm Declaration, which deals with the development and sustainability of the environment, highlights, among other things, the fundamental right of man to adequate living conditions enabling a dignified life, and also draws attention to the sustainable development of natural resources[13]. It is not our goal to thoroughly analyse all political and legal documents dealing with water as a possible subject of rights. The purpose of the previous lines is to point out that the lack of access to water, the notion on the importance of water for human life, and the desire to establish a form of human rights that provide real access to water goes deeply into the history. Perhaps, before moving into the present, it would be appropriate to mention the significance of the Dublin Principles and the Rio de Janeiro Conference, both of which enunciated environmental rights, but looking back the "legislative" enthusiasm may not be exaggerated as none of these events helped to formulate an unambiguous and legally binding framework that would guide the content of the right to water and how to obtain it.

This happened only in 2005, when the Water and Health Protocol came into force, considered the first wide international legal mechanism aimed at preventing, controlling and reducing water-borne illnesses. The purpose of the Protocol is, among others, to protect human health and to improve living conditions through better water management[14]. Another important moment was the adoption of a resolution recognizing access to clean water and sanitation as a human right at the UN platform on the occasion of the 64th General Assembly. The resolution includes: "calls for states and international organizations to provide funding, build capacities and transfer technologies, especially to developing countries, and make every effort to ensure accessible, safe, clean and affordable drinking water and sanitation for all."[15]

Although the establishment of the right to water at the international level is a significant progress in international law, it is still only perceived as a political consensus. The effectiveness of a standard, i.e. its application potency, is one of the most basic attributes of standards. It is therefore symptomatic that authors of the standard seek its fulfilment in practice. However, this is extremely demanding in terms of water distribution, not only in an international context, where there is a constant problem with the enforcement of international standards, but also in the context of national solutions. In the next section, we will try to identify the key issue of implementing the right to water in its application practice and outline a possible solution to the current situation.

[8] Guyton, Hall (2006)
[9] Barlow (2007)
[10] Čechmánek (2015)
[11] Gaiman (2018)
[12] Grönwall (2008)
[13] Čechmánek (2015)
[14] Úrad verejného zdravotníctva Slovenskej republiky (Public Health Authority of the Slovak Republic)
[15] Un Record: General Assembly GA/10967: General Assembly Adopts Resolution Declaring Access to Clean Water, Sanitation.

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V. Right to Water: Application Practice

To formulate a normative goal is one thing, but another thing is to implement the content of such a standard. Nowadays, few people are likely to oppose the noble idea of the universality of humanism and human dignity. This is related to people's access to water. As mentioned in the previous sections, it is hard to implement any other rights without such an approach. So how to realize the fundamental human right to water? Activism is often confined to the question of whether water availability should be universal and whether water is to be subject to human rights by leaving the solutions to other subjects.

As the right to water should be a human right based on the concept of universality and the over-positive nature of fundamental human rights, such entity will be state. The state is, by default, the guarantor of respect for and implementation of fundamental human rights. Contrary to the first generation rights, whose implementation and protection is largely due to the non-interference of the state power in the sphere of citizens' freedom, the exercise of the right to water requires the opposite approach - the institutional involvement of the state[16]. Such an obligation may arise from the national legislation or case law. For example the decisions by the Argentinian courts, which had the duty of state authorities to ensure a minimum amount of water (50 to 100 litres per person per day) to residents, regardless of their ability to pay for such service[17]. This option prefers the universal access to water over the private interests of the private water sector. It is logical, since the right to do business may enter into a collision with the right to water. The fight against the so-called water privatization is not unknown also in the domestic environment. In the European perspective, the Right2water initiative (the first successful European petition signed by more than 1.8 million EU citizens) is known for its attempt to exempt water from the single market rules in addition to the universal access to water.

Apart from the fact that the exemption requirement was already outlined by the Directive 2000/60 / EC of the European Parliament and of the Council (in the preamble, point 1, it stressed that water is not a commercial product but rather a heritage that needs to be protected and handled appropriately[18]), Right2water has repeatedly launched the debate on whether it is correct to let private sector and water installations participating on the water management, or exclude them entirely arguing that citizens should be able to *"pay reasonable fees that reflect their needs, not the needs of distribution company shareholders."*[19] Although this has not been fully implemented, the European Union has adopted *"a commitment to promote the right of access to water in development policies, where public-private partnerships have been preferred so far."*[20] The biggest concern about the private sector involved in the water sector is the increase in prices and the consequent unavailability of water for the poor[21].

On the other hand, it is important to note that private sector participation in water services and distribution networks does not yet mean water privatization. In addition, according to several studies, the participation of private powers in the water economy has been beneficial in terms of the quality, purity and availability of water[22]. This is due to the fact that an ideal case where the state has exclusive rights and obligations to water services or water distribution networks also entails certain financial demands, but these are, according to calculations, for the state unbearable without private sector participation. This can be seen, for example, in Argentina, where after the involvement of private companies in water management, child mortality has decreased by up to 8% over the period 1991-1997. But let's have a look at the world's strongest economy - the USA. An aging piping system poses a threat to the quality and purity of the water as well as to the loss during its distribution. In cities, losses are around 15%, but in geologically unstable regions, this figure rises to 50%. The necessary investments for maintenance of the US water networks were planned to require about trillion dollars in the previous decade[23]. Unlike private companies, states cannot afford such investments and ultimately by the complete removal of private individuals, access to real water is also limited. In such situation, it is not a very moral dilemma, since it is not possible to provide water to everyone, for free and in adequate quality. The distribution of water with the help of the private sector, which bears a significant part of the investment, seems to be a compromise. On the other hand, this is offset by water charges. In the current situation, it is obviously impossible to ensure universal right to water. Such a possibility remains the domain of only some countries.

VI. Conclusions

The right to water is not only logical but also long-term initiative of the world leaders, which aims at delivering affordable water for all in order to ensure the basic needs for a dignified life. The long-term normative efforts, however, face a number of practical obstacles, of which the most significant are probably the costs of ensuring the real operation of such a right. The availability of water is inevitably tied to the construction/maintenance of water networks, what is typically too financially demanding for individual states. This is also related to the legitimate requirement to exclude the private sector from doing business in the water sector in order to prevent commercialization and the related inaccessibility of water for people in need. As it can be observed in some regions, the private sector is so far indispensable for securing water supplies, since in synergy with state institutions, they can provide people with water in a more efficient way than the states themselves could do.

[16] Singh (2016)

[17] Giupponi, Pazz (2015)

[18] Directive 2000/60/EC of the European Parliament and of the Council of 23 October 2000 establishing a framework for Community action in the field of water policy

[19] Euractiv

[20] *Ibid.*

[21] Labonte, Schrecker, Sanders, Meeus (2004)

[22] Marin (2009)

[23] Water Infrastructure Now

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THE NOTION OF THE EUROPEAN UNION TRADEMARK

OCHRANNÁ ZNÁMKA EURÓPSKEJ ÚNIE

Jarmila LAZÍKOVÁ*

I. Introduction

Trademarks belong to the oldest subject matters of the intellectual property. The prehistoric nations used the special signs on their property (e.g. on their domestic animals) to prevent the robbery. In ancient Egypt, people draw various signs on the stone buildings to sign an origin of the buildings materials. The trade development evoked a need to distinguish the origins of goods on the market. The used sign was a guarantee of quality or particular characteristics of goods. In ancient Greece, trademarks were called "signum" and were used mainly on the ceramic goods, guns and other goods for export(1). The legal protection of trademarks was given for the first time in ancient Rome. To misuse a trademark was considered as a crime and the offender was threatened a criminal sanction(2). In the middle Ages, there were used signs in the aristocratic families. Later, when the crafts were being developed, the craftsmen tried to use various signs to distinguish their goods from all other goods on the market. The associations of craftsmen, which associated the craftsmen to protect their rights, also used the signs. These associations controlled also the quality of goods of their members. If the quality of a good was not sufficient according to the requirements of the association, a craftsman was sanctioned according to the regulations of the association, e.g. by exclusion from the association of the craftsmen(3). One of the oldest legal regulations of trademarks is a British law adopted by the British Parliament in 1266 (Bakers' Marking Law). It obliged all bakers to sign by their signs all their baker's goods(4). However, the first modern laws on trademarks were adopted in 19th century with the industrial revolution. In 1857, France adopted the Law on the production and marking goods. The Great Britain adopted two laws related to the trademarks. In 1862 the Law on trademarks was adopted, which regulated a crime of imitating a trademark. In 1875 the Law on trademarks registration was adopted, which enabled the registration of trademarks by the British Patent Office(5). Ger-

(1) Pipková (2007)
(2) Lochmanová (1997)
(3) Jakl (2003)
(4) WIPO(2005)
(5) Ono (1999)

Abstract (EN)

The EU trademark law has recorded the important changes in the last years. The Community trademark in the past and the EU trademark at the present have become very popular legal measures not only in the EU Member States but also in the third countries. Its preferences are increasing year to year. The EU trademark may consist of a sign that fulfils two main attributes. Firstly, there is a distinctive character. Secondly, there is a capability of being represented on the Register of the EU trademarks. The second attribute is new and replaced the previous attribute - capability of being represented graphically. The interpretation of the above mentioned attributes is not possible without the judgements of the Court of Justice of the European Union. It is necessary to take into account the kind of trademark, list of the goods and services, which should be signed by the trademark, and its perception by the public. The paper includes the main judgements of the Court of Justice of the European Union related to the interpretation of the sign that may be registered as the EU trademark. They are very helpful in the application practice of the European Union Intellectual Property Office and the national offices of the intellectual property as well.

Keywords (EN)

EU trademark, goods and services, right for priority, EUIPO, national trademark

Abstrakt (SK)

Právo ochranných známok EÚ zaznamenalo v posledných rokoch výrazné zmeny. Ochranná známka Spoločenstva a v súčasnosti ochranná známka EÚ sa stala obľúbeným právnym inštitútom nielen v členských krajinách EÚ, ale i v tretích krajinách a jej obľúbenosť z roka na rok vzrastá. Ochrannou známkou EÚ môže byť označenie, ktoré spĺňa dva základné atribúty, a to rozlišovaciu spôsobilosť a spôsobilosť byť vyjadrené v registri, ktorý nahradil doterajší atribút grafického vyjadrenia. Výklad uvedených atribútov sa nezaobíde bez judikatúry Súdneho dvora, pričom je potrebné vziať do úvahy druh ochrannej známky, zoznam tovarov a služieb, na ktoré sa vzťahuje a jej vnímanie verejnosťou. V článku sú uvedené najvýznamnejšie rozhodnutia Súdneho dvora EÚ týkajúce sa výkladu označenia, ktoré môže byť zaregistrované ako ochranná známka, a ktoré významne pomáhajú rozhodovacej praxi EUIPO a národných úradov duševného vlastníctva.

Kľúčové slová (SK)

ochranná známka EÚ, tovary a služby, právo prednosti, EUIPO, národné ochranné známky

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many adopted the law on trademarks for the first time in 1874, which introduced the registration system of trademarks. In 1894 there was adopted a new law on the protection of goods marking[6]. In Habsburg´s monarchy, the Austrian imperial patent no. 230 was adopted in 1858 that enabled the registration of trademarks in the particular chamber of the crafts and commerce. In 1890, the imperial patent was replaced by the Law no. 19/1890 Coll. on the trademarks protection, which was valid for Austria. In Hungary, the Article II was adopted in 1890, which was abolished by the Law no. 471/19919 Coll. on the temporal measures of the trademarks protection after the formation of Czechoslovakia. The validation of the Law no. 19/1890 Coll. was expanded into Slovakia [7]. These legal rules were adopted under the motivation of the Paris Convention on the protection of industrial property 1883 (no. 64/1975 Coll.) that provided the legal protection to the patents, trademarks, industrial designs, utility models, service marks, trade names and geographical indications.

The central objective of the EU is to create the internal market with the free movement of goods, services, capital and persons that is to ensure within Community similar conditions to those existing in a national market[8]. The development of the internal market, keeping the EU at the top of the international innovations and the preserving of its global competitiveness could be ensured by the development of science, techniques and innovations. Moreover, the innovations, research and scientific progress contribute to the welfare of the EU citizens. The innovations and the results of the creative activities of the human beings are protected by the intellectual property law, which should provide fast and effective legal protection not only in the field of the repressive legal measures (it means after the breach of the intellectual property rights) but also in the field of the preventive legal measures, which eliminate the breaches of the intellectual property rights. Therefore, the effort of the EU (as well as Communities before 2009) is focused on the harmonisation of legal regulations of the Member States in the field of the intellectual property. One of the first subject matters in the field of the intellectual property was a trademark, which was harmonised in the 80's of the 20th century. In 1989, the first Council directive 89/104 to approximate the laws of the Member States relating to trademarks was adopted, because the trademark laws currently applicable in the Member States contain disparities, which may impede the free movement of goods and freedom to provide services and may distort competition within the common market (preamble of the Council directive 89/104). The directive was oriented on the harmonisation of the selected legal measures on trademarks such as notion of signs, which are able to create the trademark, absolute and relative grounds for refusal the registration of sign, grounds for revocation and invalidity of the trademark, rights to the trademark, limitation of the effects of the trademark, exhaustion of the rights conferred by the trademark, use of trademark, and acquiescence of use of a newer trademark. The directive was an inspiration also for the Slovak lawmaker when preparing the first Slovak law no. 55/1997 Coll. on trademarks in spite of the fact that the Slovak Republic was not a candidate country of the EU at that time. 19 years later, the new directive of the European parliament and Council 2008/95/EC to approximate the laws of the Member States relating to trademarks was adopted. It did not bring any important changes in the harmonisation process of trademarks. The important changes were brought by the new directive 2015/2436 of the European Parliament and of the Council of 16 December 2015 to approximate the laws of the Member States relating to trademarks. The directive abolishes the obligation of the graphic expression of a sign, which should be registered as trademark. This obligation is replaced by the obligation of being represented in the register. It is enabled to register new types of trademarks, whose registration was absolutely impossible (e.g. cock-crowing due to the impossibility of the graphic expression) or very problematic (e.g. sound had to be expressed by the stave) up to the new directive adoption. Nowadays, the sound trademarks can be expressed by the MP3 or MP4.

In spite of the harmonisation process, the EU has not left the idea to create a trademark, which should be valid in all Member States after a single registration. The idea was realised by the adoption of the Council regulation 40/94 on Community trademark. The regulation has an objective to support the economic activities and a continuous and balanced expansion by completing an internal market, which functions properly and offers conditions, which are similar to those obtaining in the national market, to remove barriers to free movement of goods and services and to ensure that competition is not distorted, but, in addition, legal conditions must be created, which enable undertakings to adapt their activities to the scale of the Community, whether in manufacturing and distributing goods or in providing services (preamble of the Council regulation 40/94). For the purpose of attaining the Community's said objectives it is necessary to create uniform protection of trademark whereby undertakings can by means of one procedural system obtain Community trademarks, to which uniform protection is given and which produce their effects throughout the entire area of the Community (preamble of the Council regulation 40/94). The Community trademarks became the third registration system of trademarks in the Member States except for the national and international system introduced by the Madrid Agreement 1891 (no. 64/1975 Coll.), Madrid Protocol 1989 (no. 267/198 Coll.) and their common regulations 1989 (no. 345/1998 Coll.). The new system of trademark's legal protection has been interesting not only for businessmen from the EU Member States but also for the businessmen from the third countries, because the single registration enables to protect a trademark in the all EU countries without any national part of registration procedure when comparing to the Madrid system. Moreover, the access of the new Member States to the legal protection of a trademark was automatically expanded to all new Member States. The Community trademark system was accompanied by the institutional changes. The first of all, a new EU body needed to be created responsible for the registration process and acting the regulation on trademark. Therefore, the Office for the Harmonisation of Internal Market (OHIM) was established in Alicante in Spain. In 1996, the OHIM received more than 25 000 applications for Community trademarks

[6] *Ibid.*
[7] Maruniaková, I. et al. (2012)
[8] C-15/81

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from the EU Member States and nearly 20 000 applications for Community trademarks from the third countries. This count is still increasing and nowadays, there are more than 100 000 applications for the EU trademark per year; of it 60 – 70% of applications are coming from the EU Member States. The majority of applications is coming from Germany (16 000 applications in 2016), USA, the Great Britain, Italy, Spain, France and China (app. 6 000 applications in 2016). In comparison, only 3000 applications for the EU trademark have been filed from Slovakia, since accession into the EU. In the period 2014 –2016 Slovakia filed more than 300 applications for the EU trademark per year what is 0, 5% of all applications for the EU trademark filed by the EU Member States per year.

In 2009 the EU decided on reform of the trademark law, since it was substantially amended several time. The regulation adopted in 1994 was replaced by the new Council regulation 207/2009 on the Community trademark. The definition of the trademark owners was simplified, the new absolute grounds for refusal were added, and division of the application and revocation of decisions were enabled. The adoption of the new regulation renumbered the particular rules. In 2015, the EU has adopted the most important amendment of the trademark law. We mentioned above that the harmonisation directive 2015/2436 was adopted. Related to this, within the reform of the trademark law, the regulation 207/2009 on the Community trademark was amended by the regulation of the European parliament and Council (EU) 2015/2424 amending Council Regulation (EC) No 207/2009 on the Community trademark and Commission Regulation (EC) No 2868/95 implementing Council Regulation (EC) No 40/94 on the Community trademark, and repealing Commission Regulation (EC) No 2869/95 on the fees payable to the Office for Harmonization in the Internal Market. The amendment included some important changes. Firstly, there were changes related to the notions and institutional changes, which reflected the Lisbon Treaty when the Community trademark is replaced by the EU trademark. Moreover, the OHIM was renamed to the European Union Intellectual Property Office (EUIPO). In addition, the closer cooperation between the EUIPO and the national offices for intellectual property was introduced. Secondly, the fees related to the procedure at EUIPO were changed. Commission regulation on fees was abolished and the fees are regulated directly by the regulation on the EU trademark. The basic fee for the application for an individual EU trademark is related to only one class of goods and services by the Nice Convention (no. 77/1985 Coll.). Fee for the second class of goods and services and fees for each class of goods and services exceeding two for an individual EU trademark is stipulated separately. Before the amendment, the fees were stipulated separately only for each class of goods and services exceeding three for an individual EU trademark. Thirdly, the most important changes are related to the substantive and procedural issues. Within the procedural issues, the most important change is related to the observations by the third parties and opposition, revocation and invalidity of an EU trademark, the file of application directly to the EUIPO without possibility to use the national offices. The substantive matters are related to the absolute and relative grounds for refusal and notion of a sign, which is asked to be registered as a EU trademark. Due to many changes introduced by the amendment 2015/2424, the EU law maker decided on adoption of a new regulation 2017/1001 of the European Parliament and of the Council of 14 June 2017 on the European Union trademark, which includes all above mentioned changes. The new regulation has been applied since 1st October 2017. The new amendment related to the harmonisation of the trademark law in the Member States has been applied since 14th January 2019. Directive (EU) 2015/2436 of the European Parliament and of the Council of 16 December 2015 to approximate the laws of the Member States relating to trademarks and Regulation 2017/1001 of the European Parliament and of the Council of 14 June 2017 on the European Union trademark received that many legal measures are common, which enables to use the judgments of the Court of Justice of the EU (hereinafter as ECJ) on the national trademarks and the EU trademarks regardless how the ECJ interprets the directive or the regulation.

II. Objective and Methodology

The legal framework of the EU trademark law consists of the legislative Regulation 2017/1001 of the European Parliament and of the Council of 14 June 2017 on the European Union trademark, the non-legislative Commission Delegated Regulation (EU) 2018/625 of 5 March 2018 supplementing Regulation (EU) 2017/1001 of the European Parliament and of the Council on the European Union trademark, and repealing Delegated Regulation (EU) 2017/1430 and the non-legislative Commission Implementing Regulation (EU) 2018/626 of 5 March 2018 laying down detailed rules for implementing certain provisions of Regulation (EU) 2017/1001 of the European Parliament and of the Council on the European Union trademark, and repealing Implementing Regulation (EU) 2017/1431. In spite of this fact, the judgements of the ECJ is important for their interpretation, application and understanding the legal measures of the EU trademarks and national trademarks as well. The new legal regulation of the EU trademarks specifies the new attributes of a sign, which has to be registered as trademark. The aim of the paper is to interpret the new notion of the EU trademark in the context of the new legal regulation, the application practise of the EUIPO and the judgements of the EGJ. For the purpose of this paper, the jurisprudence and the judgments of the ECJ and the basic methods of jurisprudence such as legal analysis and comparison were used.

III. Notion of the EU trademark

The article 4 of the Regulation 2017/1001 on the EU trademark specifies the EU trademark as follows: An EU trademark may consist of any signs, in particular words, including personal names, or designs, letters, numerals, colours, the shape of goods or of the packaging of goods, or sounds, provided that such signs are capable of: (a) distinguishing the goods or services of one undertaking from those of other undertakings; and (b) being represented on the Register of European Union trademarks, in a manner which enables the competent authorities and the public to determine the clear and precise subject matter of the protection afforded to its proprietor. It follows that a sign being registered as a trademark has to fulfil two

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main attributes: a distinctive character and a capability of being represented on the Register of EU trademarks.

IV. Distinctive character of the EU trademark

A distinctive character is the oldest attribute of trademarks. This attribute enables to distinguish the goods and the services of a natural person or a legal entity from any other goods and services on the market. By the words of the ECJ, the essential function of the trademark is to guarantee the identity of the origin of the marked goods or service to the consumer or end user by enabling him, without any possibility of confusion, to distinguish the goods or service from others, which have another origin[9]. For the trademark to be able to fulfil its essential role in the system of undistorted competition, which the Treaty seeks to establish, it must offer a guarantee that all the goods or services bearing it have originated under the control of a single undertaking, which is responsible for their quality[10]. A trademark's distinctiveness within the meaning of the EU secondary law must be assessed, first, by reference to those goods or services and, second, by reference to the perception of the relevant public, which consists of average consumers of the goods or services in question, who are reasonably well informed and reasonably observant and circumspect[11].

IV.1 Distinctive character by reference to the goods and services

In the registration procedure of a trademark (regardless whether at the EUIPO, national offices or international office of WIPO) there is used a system of classification of goods and services, which was introduced in 1957 by the Nice Agreement Concerning the International Classification of Goods and Services for the Purposes of the Registration of Marks (no. 118/1979 Coll.). Nowadays, the international classification of goods and service for the purposes of the registration of trademarks includes 45 classes; of it 34 classes for goods and 11 classes for services. According to the article 33 (2) of the regulation 2017/1001 on the EU trademarks the goods and services, for which the protection of the trademark is sought shall be identified by the applicant with sufficient clarity and precision to enable the competent authorities and economic operators, on that sole basis, to determine the extent of the protection sought. For the purposes of classification of goods and services, the article 33 (3) of the regulation 2017/1001 on the EU trademarks enables to use the general indications included in the class headings of the Nice Classification or other general terms, provided that they comply with the requisite standards of clarity and precision. The goods and services, for which the protection of the trademark is sought to be identified by the applicant with sufficient clarity and precision to enable the competent authorities and economic operators, on that basis alone, to determine the extent of the protection sought[12]. On the one hand, the competent authorities must know with sufficient clarity and precision the goods and services covered by a mark in order to be able to fulfil their obligations in relation to the prior examination of applications for registration and the publication and maintenance of an adequate and precise register of trademarks. On the other hand, economic operators must be able to acquaint themselves, with clarity and precision, with registrations or applications for registration made by their actual or potential competitors, and thus to obtain relevant information about the rights of third parties[13]. The EU law does not preclude the competent national authorities from requiring or agreeing that an applicant for a national trademark should identify the goods and services for which he is seeking the protection conferred by the trademark by using the Nice Classification. However, in order to guarantee the smooth functioning of the system for the registration of trademarks, such identification must meet the requirements of clarity and precision [14]. The requirement of clarity and precision is just not fulfilled when applying the Nice Agreement. The ECJ did not name directly, which classes are in harmony with the requirement of clarity and precision. In the EU Member States were used two approaches to the use of the general indications of the class headings of the Nice Classification, namely the approach corresponding to that derived from the Communication No 4/03, according to which the use of all the general indications listed in the class heading of a particular class constitutes a claim to all the goods or services falling within that particular class, and the literal approach, which seeks to give the terms used in those indications their natural and usual meaning [15]. Therefore, the EU Member States issued Common Communication on the Common Practice on the General Indications of the Nice Class Headings (20th November 2013), which included 11 non-acceptable general indications of the Nice class headings that were not found being clear and precise. In 2015, there was issued the new Common Communication on the Common Practice on the General Indications of the Nice Class Headings (28th October 2015), which includes 5 general indications that are not clear and precise. Therefore, the unclear and imprecise general indications cannot be accepted without further specification. The applicants of trademarks are obliged to precise which goods and services belonging into these classes bear in mind. The five general indications include class 7 (machines), class 37 (repair), class 37 (installation services), class 40 (treatment of materials), and class 45 (personal and social services rendered by others to meet the needs of individuals. The unclearness and imprecision is given because these goods and services cover a wide range of goods and services related to the various fields of market. By the article 33 (5) of the regulation 2017/1001 on the EU trademark, the use of general terms, including the general indications of the class headings of the Nice Classification, shall be interpreted as including all the goods or services clearly covered by the literal meaning of the indication or term. The use of such terms

[9] C- 517/99, par. 22, C- 39/97, par 28
[10] C-39/97, par. 28; C-10/89, par. 13 and 14 and the cited judgements
[11] C-363/99, par. 34 and the cited judgements
[12] C-307/10, par. 49
[13] C-420/13, par. 43
[14] C-307/10, par. 52 and 53
[15] C-307/10, par. 58

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or indications shall not be interpreted as comprising a claim to goods or services, which cannot be so understood. This rule is a reaction to the change in the application practice of the EUIPO under the influence of the judgements of the ECJ[16]. Up to this change, the EUIPO used the general indications to all goods and services named in the alphabetical order of the particular class. The distinctive character of a mark, including that acquired by use, must be assessed in relation to the goods or services in respect of which registration is applied for. In assessing the distinctive character of a mark in respect of which registration has been applied for, the following may inter alia also be taken into account: the market share held by the mark; how intensive, geographically widespread and long-standing use of the mark has been; the amount invested by the undertaking in promoting the mark; the proportion of the relevant class of persons who, because of the mark, identify goods as originating from a particular undertaking; and statements from chambers of commerce and industry or other trade and professional associations[17]. However, the circumstances in which that requirement may be regarded as satisfied cannot be shown to exist solely by reference to general, abstract data such as predetermined percentages[18].

The relevance of the relation between trademark on the one hand and goods and services on the other hand is shown in the judgements related to the absolute ground for refusal by the article 7 (1) (c) of the regulation 2017/1001 on the EU trademark. The situations specifically covered by Article 7(1) (c) of Regulation No 40/94 are those in which the sign in respect of which registration as a mark is sought is capable of designating a 'characteristic' of the goods or services referred to in the application. The fact that the legislature chose to use the word 'characteristic' highlights the fact that the signs referred to in Article 7(1)(c) of Regulation No 40/94 are merely those, which serve to designate a property, easily recognisable by the relevant class of persons, of the goods or the services in respect of which registration is sought[19]. It follows that on the one hand, a sign could be perceived as a sign described a characteristic of some classes of goods or services (e.g. information on the weights such as KILO, TON etc.) and on the other hand this sign could be acceptable as a trademark for other classes of goods and services because a sign would be not perceived as a characteristic of goods and services (e.g. TON or KILO for the trademark of services where the information on weights are illogical). As the Court has pointed out, a sign can be refused registration on the basis of Article 7(1)(c) of Regulation No 40/94 only if it is reasonable to believe that it will actually be recognised by the relevant class of persons as a description of one of those characteristics [20]. The ECJ refused the legal protection to the sign "1000" for the periodicals containing crossword puzzles and rebus puzzles because the relevant public will perceive the sign "1000" on a particular publication as an indication that it contains 1000 riddles or rebus puzzles [21] or the sign "ecodoor" that the term 'ecodoor' would be understood immediately by the relevant public to mean 'a door the construction and mode of operation of which are ecological' [22]. According to settled case-law, a sign will be descriptive if there is a sufficiently direct and specific relationship between the sign and the goods and services in question to enable the public concerned immediately to perceive, without further thought, a description of one of the characteristics of the goods and services in question[23].

IV.2 Distinctive character by reference to the relevant public

A sign which will be registered as EU trademark should be perceived as a sign of a particular goods or services. The signs suitable for marking the goods and services are words, including personal names, or designs, letters, numerals, and the shape of goods or of the packaging of goods, but also colours and sounds, which are included in the article 4 of the regulation 2017/1001 for the first time. However, in assessing the potential distinctiveness of a given colour as a trademark, regard must be had to the general interest in not unduly restricting the availability of colours for the other traders who offer for sale goods or services of the same type as those in respect of which registration is sought[24]. The distinctive character is not given when a sign consists of simple illustration of a good or a sign with the descriptive character providing only information on the goods or services[25]. The ECJ interpreted the distinctive character of various types of trademarks in many judgements. The important criterion to consider the distinctive character of a sign is the relevant public, which consists of average consumers of the goods or services in question, who are reasonably well informed and reasonably observant and circumspect[26]. Some of the signs applied for as a trademark show a lower other higher distinctive character. In that regard, the Court has already stated that difficulties in establishing distinctiveness which may be associated with certain categories of marks because of their very nature - difficulties that it is legitimate to take into account - do not justify laying down specific criteria supplementing or derogating from application of the criterion of distinctiveness as interpreted in the case-law [27]. The example of such trademarks could be a trademark created by only letter, or only number or only colour. For the purpose of applying those criteria, the average consumer's perception is not necessarily the same in the case of a three-dimensional mark consisting of the appearance of the product itself as it is in the case of a word or figurative mark consisting of a sign, which is unrelated to the appearance of the products

[16] C-307/10
[17] C-299/99, par. 59-60
[18] C-108/97 and C-109/97, par. 52
[19] C-51/10 P, par. 49-50
[20] C-51/10 P, par. 50; C-108/97 and C-109/97, par. 31; C-363/99, par. 56
[21] C-51/10 P, T-298/06
[22] T-625/11, par. 24; C-126/13 P
[23] T-234/06, par. 25 and cited judgements
[24] C-104/01, par. 60
[25] The Office of the industrial property of the SR, Methodology of Procedures in the matter of trademarks, 2018
[26] C-64/02 P, par. 43; C–468/01 P to C-472/01 P, par. 33; C-104/01, par. 46; C-53/01 to C-55/01, par. 41; C-363/99, par. 34; C-342/97, par. 26
[27] e.g. C-265/09 P, par. 34; C-64/02 P, par. 36; C-398/08 P, par. 38

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it denotes. Average consumers are not in the habit of making assumptions about the origin of products on the basis of their shape or the shape of their packaging in the absence of any graphic or word element, and it could, therefore, prove more difficult to establish the distinctiveness of such a three-dimensional mark than that of a word or figurative mark[28]. Similarly, consumers are not in the habit of making assumptions about the origin of goods based on their colour or the colour of their packaging, in the absence of any graphic or word element, because as a rule a colour per se is not, in current commercial practice, used as a means of identification. A colour per se is not normally inherently capable of distinguishing the goods of a particular undertaking[29].

The ECJ has not excluded distinctiveness for marks consisting of a single letter; however, it may prove more difficult to establish distinctiveness for such type of marks than for other word marks[30], because the relevant public has a habit to perceive the word and figural trademarks as identification of origin; it is not the case of a sign consisting only of a colour as it is in the case of a word or figurative mark which, as at the present case, consists of a sign that bears no relation to the appearance of the goods covered[31]. It follows from all of the foregoing that, by assuming from its lack of graphical modifications or ornamentations that, by definition, the sign (created by only letter of Greek alphabet "α") lacked distinctive character in relation to the Times New Roman character font, without carrying out an examination as to whether, on the facts, that sign is capable of distinguishing, in the mind of the reference public, the goods at issue from those of the applicant's competitors[32]. In addition, the level of attention of the relevant public is likely to vary according to the category of goods or services proposed and consumers may constitute a very attentive public where, as at the present case, their commitments can be relatively significant and the services supplied relatively technical[33]. The General Court confirmed the decision of the EUIPO and refused to accept the distinctive character of the sign PHOTOS.COM because the first component of the sign, namely the word 'photos', immediately informs the relevant public that the goods and services covered by the application are related to photography or have photography as their subject matter. It follows that that element is devoid of distinctive character in relation to the goods or services concerned. As regards the element '.com', it is important to note that this will immediately be recognised by the relevant public as referring to an internet site; it is a technical and generic element, the use of which is required in the normal structure of the address of a commercial internet site. Furthermore, the element '.com' may also indicate that the goods and services covered by the trademark application can be obtained or viewed on-line, or are internet-related. Accordingly, the element in question must also be considered to be devoid of distinctive character in respect of the goods or services concerned[34]. The General Court refused to accept the distinctive character of the word sign INSULATE FOR LIFE, because immediately and without further analytical effort, as a reference to very long-lasting services related to the use of a particularly durable insulation material, and not as an indication of the commercial origin of those services[35].

The ECJ does not exclude the names of natural persons. In the same way as a term used in everyday language, a common surname may serve the trademark function of indicating origin and, therefore, distinguish the products or services concerned[36] regardless the fact that the EU secondary law enables third parties to use their name in the course of trade[37].

The trademarks can be created also by slogans if the relevant public perceive it as a promotional formula and as an indication of the commercial origin of goods or services[38]. However, while it is true that a mark possesses distinctive character only as far as it serves to identify the goods or services in respect of which registration is applied for as originating from a particular undertaking, it must be held that the mere fact that a mark is perceived by the relevant public as a promotional formula, and that, because of its laudatory nature, it could in principle be used by other undertakings, is not sufficient, in itself, to support the conclusion that that mark is devoid of distinctive character[39]. In addition, the Court has held, in particular, that an advertising slogan cannot be required to display 'imaginativeness' or even 'conceptual tension, which would create surprise and so make a striking impression' in order to have the minimal level of distinctiveness[40]. Registration of a sign as a trademark is not subject to a finding of a specific level of linguistic or artistic creativity or imaginativeness on the part of the proprietor of the trademark. It suffices that the trademark should enable the relevant public to identify the origin of the goods or services protected thereby and to distinguish them from those of other undertakings[41].

A figural trademark can be created also by the simple geometric shapes in a special case, e.g. a pentagon can fulfil an identification function only if it contains elements which are suitable for distinguishing it from other pentagonal representations and attracting the attention of the consumers[42]. By other words, the case law, which was developed in relation to three-dimensional trademarks consisting of the appearance of the product itself, also applies where, as at the present case, the trademark applied for is a figurative mark consisting of the two-dimensional representation of that product[43]. By the ECJ only a trademark which departs significantly from the norm or customs of the sector and thereby fulfils its essential function of indicating origin, is not devoid of any distinctive charac-

(28) C-26/17 P, par. 32
(29) C-104/01, par. 65
(30) C-265/09 P, par. 39; T-23/07, par. 41
(31) T-23/07, par. 51
(32) T-23/07, par. 56; T-302/06; T-441/05
(33) T-441/05, par. 63; T-320/03, par. 70 and 73
(34) T-338/11, par. 21 and 22
(35) T-157/08, par. 52
(36) C-404/02, par. 30
(37) C-404/02, par. 32
(38) C-398/08, par. 45
(39) C-398/08 P, par. 44
(40) C-398/08 P, par. 39; C-64/02 P, par. 31 and 32
(41) C-329/02 P, par. 41
(42) T-304/05, par. 23
(43) C-26/17 P, par. 34; C-25/05 P, par. 29

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ter[44]; however, the more closely the shape for which registration is sought resembles the shape most likely to be taken by the product in question, the greater the likelihood of the shape being devoid of any distinctive character[45]. According to the above mentioned, the ECJ confirm the decision of the EUIPO which refused to register a sign of a sweet in a gold-coloured wrapper with twisted ends that the wrapping at issue was not substantially different from wrappers for sweets or caramels commonly used in trade[46]. On the other hand, a minimum degree of distinctive character is sufficient to render the ground for refusal set out in that article inapplicable[47]. The ECJ solved a question if there is a three-dimensional trademark created by the shape, where the registration of the mark did not seek to protect that shape but sought solely to protect the application of a colour to a specific part of that product. The ECJ noted, while it is true that the shape of the product or of a part of the product plays a role in creating an outline for the colour, it cannot, however, be held that a sign consists of that shape in the case where the registration of the mark did not seek to protect that shape but sought solely to protect the application of a colour to a specific part of that product[48].

The trademark can be created also by a shape of a good or a shape of its wrapper (e.g. Toblerone). However, the diction of the article 7 (1) (e) of the regulation 2017/1001 has not to be fulfilled because the application would be refused. The article 7 (1) (e) is one of the absolute grounds for refusal, according to which there will be not register a sign which consists exclusively of firstly, the shape, or another characteristic, which results from the nature of the goods themselves; secondly, the shape, or another characteristic, of goods which is necessary to obtain a technical result; thirdly, the shape, or another characteristic, which gives substantial value to the goods. It follows that there are mentioned some facts. Firstly, the absolute ground for refusal is related only goods, not services as results from the above mentioned diction of the rule. Secondly, the rule does not have a cumulative character; it means that the absolute ground for refusal is fulfilled when at least one of the three alternatives is given. However, the ECJ judged that registration of a mark could not be refused where each of the three grounds for refusal set out was only partially established[49]. Thirdly, the previous regulation (no. 207/2009) included only a shape of a good. The shape of a good is usually understood as a set of lines or contours that outline the product concerned[50]. It regulated the three-dimensional trademarks but also the two dimensional ones, if a figure is a three-dimensional object[51]. The regulation 2017/1001 added to the diction "shape" also the notion "another characteristic" which could be find in all three alternatives. At the present, there is no judgement that interpret the notion "another characteristic" and so, it is not clear what does it mean. If we take into account the new type of trademarks, which can be represented on the register, we suppose that "another characteristic" is linked to the new types of trademarks such as sound, motion, multimedia or holographic trademark. The objective of this rule is to prohibit a registration as a trademark of any sign consisting of the shape of goods which is necessary to obtain a technical result ensures that undertakings may not use trademark law in order to perpetuate, indefinitely, exclusive rights relating to technical solutions[52]. When the shape of a product merely incorporates the technical solution developed by the manufacturer of that product and patented by it, protection of that shape as a trademark once the patent has expired would considerably and permanently reduce the opportunity for other undertakings to use that technical solution[53]. The system of intellectual property provides a monopoly right to an owner of patent, utility design, or design to use his/her intellectual property and interferes with the economic competition as one of the basic pillars of the internal market. On the other hand, the lack of a system of monopoly rights introduced by the intellectual property law would cause a decreasing of the investment in the research and development with the negative impact on the intellectual property. At last the internal market would be inhibited as well. The compromise is to provide only temporal protection to the monopoly rights of the owners of the intellectual property, mainly for a period for returning the investment in research and development and after the expiration of that period the intellectual property is free for all economic subjects on the market. This period is fixed, stipulated by law, e.g. patents are protected for 20 years without option of prolongation, utility designs are protected for maximum 10 years, and designs are protected for maximum 25 years. The trademarks are protected 10 years; however, the period can be prolonged for next 10 years repeatedly. Without the rule cited above there would be given a possibility to act in fraudem legis because the owners of an intellectual property would be free to choose the patent or trademark protection and they could prefer the trademark protection which is de facto time unlimited. The ECJ added that technical solutions are capable of protection only for a limited period, so that subsequently they may be freely used by all economic operators[54]. Consequently, in the context of an application for registration of a sign consisting exclusively from the shape of goods, it must first be ascertained that there is no obstacle under Article 7(1) (e) of Directive 2017/1001 which may preclude registration, before going on to analyse, as appropriate, whether the sign at issue might have acquired a distinctive character[55].

In the practice we can meet the trademarks composed of a combination of elements. They were the object of the judgement BioID[56]. As regards a compound mark, any distinctive character may be assessed, in part, in respect of each of the terms or elements, taken separately, but that assessment must, in any event, be based on the overall perception of that trademark by the relevant public and not on the presumption that

[44] C-456/01 and C-457/01 P, par. 39
[45] C-468/01 and C-472/01 P, par. 37
[46] C-25/05 P, par 31, C-24/05 P
[47] T-129/00, par. 49; T-34/00, par. 39, T-128/01, par. 33
[48] C-163/16, par. 24
[49] C-215/14, par. 48-51
[50] C-163/16, par. 21
[51] T-331/10, par. 24 and 27
[52] C-48/09 P, par. 45; C-421/15 P, par. 33
[53] C-48/09 P, par. 46
[54] C-48/09 P, par. 46
[55] C-215/14, par. 40
[56] C-37/03

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elements individually devoid of distinctive character cannot, on being combined, present such character. The mere fact that each of those elements, considered separately, is devoid of distinctive character does not mean that their combination cannot present such character[57].

The ECJ judged that a colour can dispose by a distinctive character in the special cases. In the case of a colour per se, distinctiveness without any prior use is inconceivable save in exceptional circumstances, and particularly where the number of goods or services for which the mark is claimed is very restricted and the relevant market very specific[58]. The General Court added that a colour does not in itself have a distinctive character, unless it can be demonstrated that it has acquired such a character by use and, on the other, that colours must remain available to all undertakings. It is therefore only under certain circumstances that a colour will in itself be recognised as having a distinctive character per se, on condition that the colour in question is one that is entirely unusual in regard to the goods or services concerned[59]. The combination of two or more colours is even more seldom for registration as a trademark. According to the opinion of the ECJ, a graphic representation consisting of two or more colours, designated in the abstract and without contours, must be systematically arranged by associating the colours concerned in a predetermined and uniform way. The mere juxtaposition of two or more colours, without shape or contours, or a reference to two or more colours 'in every conceivable form', does not exhibit the qualities of precision and uniformity. Such representations would allow numerous different combinations, which would not permit the consumer to perceive and recall a particular combination, thereby enabling him to repeat with certainty the experience of a purchase, any more than they would allow the competent authorities and economic operators to know the scope of the protection afforded to the proprietor of the trademark[60]. The most famous judgement of the ECJ related to a colour, as a trademark is Libertel[61]. The ECJ judged a colour per se, not spatially delimited, may, in respect of certain goods and services, have a distinctive character, provided that, inter alia, it may be represented graphically in a way that is clear, precise, self-contained, easily accessible, intelligible, durable and objective. The latter condition cannot be satisfied merely by reproducing on paper the colour in question, but may be satisfied by designating that colour using an internationally recognised identification code. In assessing the potential distinctiveness of a given colour as a trademark, regard must be had to the general interest in not unduly restricting the availability of colours for the other traders who offer for sale goods or services of the same type as those in respect of which registration is sought. Under the judgements of the ECJ, the EUIPO registered the colour Lila as a trademark for the MILKA chocolates of the company Kraft Foods. However, the EUIPO took opposite opinion on the application of the company Viking-Umwelttechnik GmbH that requested the registration as a trademark the combination of two colours – green and grey for the goods of garden mechanisms. The ECJ confirmed the decision of the EUIPO on the refusal because those two colours, or similar shades, are commonly used together for gardening products, the effect of juxtaposing the colours green and grey is to create an impression of a shade of green – a colour that is widely used for and enhances the appeal of the goods in question – against a backdrop in a shade of light grey, which is a colour that is not designed to attract attention, as it resembles the colour of metal and is commonly used on many types of material. The consumer will therefore not see the juxtaposition of green and grey as a sign indicating that the goods come from the same undertaking but will rather see it merely as an aspect of the finish of the goods in question. In addition, the shade of green used in the juxtaposition sought to be registered is not perceptibly different enough from the shades of green in common use in the sector to which the goods belong[62].

In the case of sound trademarks the ECJ judged in its judgement Shield Mark BV[63] that a sounds can be considered as a trademark if they are able to distinguish the goods and services from the others and they can be expresses graphically (the judgement was adopted in 2001 before the amendment of notion of a trademark). If a sound is expressed by description, such as the first nine notes of "Für Elise" or a cockcrow or an onomatopoeia or musical notes, which are a common method of representing sounds, a sequence of notes without more, such as E, D#, E, D#, E, B, D, C, A, these sounds expressed graphically were not able to be registered as a trademark. On the other hand, a sound was able to be registered as a trademark if the sound is expressed by a stave divided into bars and showing, in particular, a clef (a treble clef, bass clef or alto or tenor clef), musical notes and rests whose form (for the notes: semibreve, minim, crotchet, quaver, semiquaver, etc.; for the rests: semibreve rest, minim rest, crotchet rest, quaver rest, etc.) indicates the relative value and, where appropriate, accidentals (sharp, flat, natural) – all of this notation determining the pitch and duration of the sounds. This mode of graphical representation of the sounds meets the requirements of the case-law of the Court that such representation must be clear, precise, self-contained, easily accessible, intelligible, durable and objective[64]. According to the cited judgement only those sounds expressed by the stave were suitable to be registered as trademarks. On the other hand, the sounds, which could not be expressed by the stave such as sounds of animals or things were not able to be registered as trademarks because the second attribute on the graphical expression was not fulfilled. In spite of this fact, the EUIPO registered the sounds trademarks in more cases when the sounds were expressed by the sound tracks. The EUIPO practise contributed to the replacement of the attribute related to the graphical expression by the attribute being represented on the register. The amendment will enable more facile and precise expression of the registered sound trademarks. Moreover, it will open the possibilities to register the new type of trademarks.

[57] C-37/03, par. 29; C-363/99, par. 99 and 100; C-329/02 P, par. 28, C-265/00, par. 40 and 41
[58] C-104/01, par. 66
[59] T-173/00; C-447/02 P, par. 68
[60] C-49/02, par. 33-35
[61] C-104/01
[62] T-316/00
[63] C-283/01
[64] C-283/01, par. 56-62

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V. Capability of being represented in the register

The second attribute of the notion of a trademark is a capability of being represented in the register of the EU trademark (art. 4 of the regulation 2017/1001). The article 3(1) of the Commission Implementing Regulation 2018/626 the trademark shall be represented in any appropriate form using generally available technology, as long as it can be reproduced on the Register in a clear, precise, self-contained, easily accessible, intelligible, durable and objective manner so as to enable the competent authorities and the public to determine with clarity and precision the subject matter of the protection afforded to its proprietor. The regulation 2018/626 names the types of trademarks and the options of their representation only demonstratively, such as trademark composed of words, figure, shape, position, pattern, colour, sound, motion, multimedia and hologram. At the present, the trademarks can be represented by the electronic file formats such as JPEG or MP3 for sound trademarks, JPEG and MP4 for motion trademarks, MP4 for multimedia trademarks, JPEG and MP4 for holographic trademarks[65]. Other trademarks have to fulfil the requirements of the article 3 (1) of the Commission Implementing Regulation 2018/626. Their representation could be fulfilled by the description. It opens the possibilities to registration of new untraditional types of trademarks. On the other hand, the restrictions given by the judgements of the ECJ and transferred to the EU secondary law are still remaining the barriers for the registration of untraditional trademarks such as taste and odour trademarks. However, it is also a big challenge for the EU lawmaker and scientists to prepare the system of durable and clear identification of such trademarks for their representation in the register. The ECJ gave its opinion to the olfactory trademark in the case Sieckman[66] where the issue was the registration of the pure chemical substance methyl cinnamate (= cinnamic acid methyl ester), whose structural formula was added. Moreover, its sample was deposited with the Deutsches Patent- und Markenamt. In respect of an olfactory sign, the requirements of graphic representability were not satisfied by a chemical formula, by a description in written words, by the deposit of an odour sample or by a combination of those elements[67]. The General Court judged in the case Eden Sarl[68] that the olfactory mark expressed by the combination of a figurative element and a description in words, 'smell of ripe strawberries' did not constitute a valid graphic representation for the purposes. The graphic representation of an olfactory mark must, in order to be accepted, represent the odour whose registration is sought and not the product emitting that odour[69]. It was not possible to determine whether the sign, which is the subject of protection, is the image of the ripe strawberry itself, or its smell[70]. The description 'smell of ripe strawberries' was not objective, clear and precise[71], because it could refer to several varieties and therefore to several distinct smells[72]. Moreover, at the present time, there is no generally accepted international classification of smells which would make it possible, as with international colour codes or musical notation, to identify an olfactory sign objectively and precisely through the attribution of a name or a precise code specific to each smell[73]. In spite of the common opinions declared in this case by the EUIPO and the General Court, the EUIPO had registered the first and only odour trademark "smell of fresh cut grass on the tennis balls" in 2000. The attribute of graphically expression was accepted on the base of description „The smell of fresh cut grass." This registration finished in 2006.

In the cases of taste trademarks, the EUIPO refused to register the taste of artificial strawberry flavour for pharmaceutical products of the Eli Lilly and Company. The Appeal Body of the EUIPO decided that the vague description of artificial strawberry flavour does not allow for comprehension of the actual taste being referred to. A strawberry taste may be simulated in many different ways with the variable results. Moreover, the taste of strawberry is one of many common tastes used as a flavouring to mask the otherwise unpleasant taste of the products[74]. At the present, the EUIPO does not register any taste and odour trademarks. This question still remains opened because the present technologies do not allow expressing taste or odour to have a capability of being represented in the register. The ECJ judged that the requirements of graphic representability were not satisfied by a chemical formula, by a description in written words, by the deposit of an odour sample or by a combination of those elements[75]. We suppose that the similar judgement will be issued also in the case of new attribute "being represented in the register," because any of the presented above mentioned options do not fulfil the requirement to be clear, precise, self-contained, easily accessible, intelligible, durable and objective. However, the hope that new technologies could bring the solutions that will be able to fulfil all of these requirements.

VI. Conclusion

The development of the information and communication technologies creates also new possibilities to represent the trademarks. It allows leaving the attribute of the graphical expression of the trademarks. A trademark can be represented not only graphically in two-dimensional spaces but also by the electronic file formats MP3, MP4, JPEG. It enables to register also the multimedia, hologram, motion or sound trademarks at the present. Their registration according to the former legal regulation was impossible or very hard.

The new attribute of being represented in the register on the base of the present technologies does not allow ensuring the clear, precise, self-contained, easily accessible, intelligible, durable and objective representation of the taste and odour trade-

[65] Common Communication on the representation of new types of trademarks, 2018
[66] C-273/00
[67] C-273/00, par. 73
[68] T-305/04
[69] T-305/04, par. 39, C-273/00, par. 69
[70] T-305/04, par. 36
[71] T-305/04, par. 35
[72] T-305/04, par. 33
[73] T-305/04, par. 34
[74] EUIPO, R 120/2001
[75] C-273/00, par. 73

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marks. A priori, their registration is not excluded; however, the present technologies do not provide the fulfilment of all these requirements. The registration of the taste and odour trademarks is still remaining an important challenge for the science and development.

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RURAL LANDSCAPE DEVELOPMENT POLICY IN POLAND – SOME ASPECTS OF SUSTAINABILITY

POLITIKA ROZVOJA VIDIECKEJ KRAJINY V POĽSKU – – NIEKTORÉ ASPEKTY UDRŽATEĽNOSTI

Józef MOSIEJ*

I. Introduction

The very definition of 'rurality' is of course that it is a sparsely inhabited area, from which follows that it is further away from the large urban areas. In short, the EU definition is based on a definition initially introduced by the OECD that a rural area is an area with a population density of less than 150 inhabitants per km^2. A rural region is predominantly rural if more than 50% of the population of the region is living in rural communities with less than 150 inhabitants/km^2. According to this standard definition, more than 91% of the territory of the EU is 'rural' or 'predominantly rural', and this area is home to more than 56% of the EU population. Human activities, mainly in agriculture and forestry, influence the rural landscape to a large extent.

The types of farming and forest production practiced in Europe today are largely governed by the EU legislation and the EU economic incentives, especially in the EU Member States. In addition, the development of other rural activities is stimulated by the EU regional and rural development policies.

Natural ecosystems change, but perhaps not as drastically as human environments. However, nature in rural areas is not only affected by climate, geology and other site-specific properties, but it is also much affected and sometimes more or less destroyed by human activities, especially wars, pollution, urban expansion, mining, energy installations, infrastructure, agricultural practices, etc.

A process aimed at local or regional definition of sustainable rural development should always involve local stakeholders. Thus, the freedom of local people to define their own needs and take part in decisions that affect their own lives is a cornerstone in defining how to achieve sustainable rural development.

Having said that, we can only give general comments on the key challenges for sustainable rural development[(1)]:

- the organization of human activities in the landscape to protect and manage global and long-term resources,
- keeping and maintaining ecosystems,
- supporting long-term biodiversity,
- establishing the necessary interactions between urban and rural areas,
- developing a sound economy, including job opportunities, etc.,

(1) Karlsson, Rydén,Sepp (2013)

Abstract (EN)

In the recent years, when it comes to topics concerning rural areas and agriculture, sustainability has become a key term resonating in the political, economical, social and environmental discussions. These issues are discussed across the globe and Poland is not an exception. There are many features that have impact on sustainability. Among others it is situation in agricultural production, employment in agriculture, access to the land and situation at the land market, aspects of the environmental protection or the administrative structure of the country. Therefore, the main objective of the presented paper is to a comprehensive summary of different aspects influencing rural development in Poland with an emphasis on sustainability. Based on the conducted analysis it can be stated that even though many positive changes have been implemented in the Polish reality, there are still many issues with need to be urgently addressed.

Keywords (EN)

rural development, agriculture, sustainability, rural development policy

Abstrakt (SK)

Pokiaľ ide o témy týkajúce sa vidieckych oblastí a poľnohospodárstva, udržateľnosť sa stala kľúčovým pojmom rezonujúcim v posledných rokoch v politických, ekonomických, sociálnych a environmentálnych diskusiách. Otázka udržateľnosti je prítomná v krajinách po celom svete a Poľsko nie je výnimkou. Existuje mnoho aspektov, ktoré majú vplyv na udržateľnosť. Okrem iného je to situácia v poľnohospodárskej výrobe, zamestnanosť v poľnohospodárstve, prístup k pôde a situácia na trhu s pôdou, aspekty ochrany životného prostredia alebo administratívna štruktúra krajiny. Hlavným cieľom prezentovaného príspevku je preto komplexné zhrnutie rôznych aspektov ovplyvňujúcich rozvoj vidieka v Poľsku s dôrazom na udržateľnosť. Na základe vykonanej analýzy je možné konštatovať, že aj keď sa v Poľsku realizovalo mnoho pozitívnych zmien, stále existuje veľa otázok, ktoré treba urýchlene riešiť.

Kľúčové slová (SK)

rozvoj vidieka, poľnohospodárstvo, udržateľnosť, politika rozvoja vidieka

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- developing good social conditions regarding inequities, gender issues, indigenous peoples, other minority groups, etc.

II. Economic and ecologic context of the changes in Poland

In the last 30 years, the issue of sustainability, beyond the short period at the beginning of the economic and political changes since 1991 and partly in the course of negotiations before the Polish accession to the EU, has never received a high position on the political agenda. The primary investment policy is the creation of new production capacity or new service capabilities, rather than seeking to meet social needs in the most cost-effective, socially and environmentally suitable way, with the use of existing assets, its modernization and change of the function or the application of modern systems management[2].

The year 2019 in the case of Poland is the 30th year of the continuous economic growth, reflected in the doubled value of GDP (as compared with that of 1989) and reduced difference between Poland and well-developed EU member states. These are the most synthetic measures of the development success in Poland. What is the share of rural areas and agriculture in this success and the benefits thus achieved?[3]

At the same time there was a significant opportunity to improve resource efficiency, so as not to waste resources in a manner characteristic for the Polish economy until 1989. The introduction of the market economy and the recession in its early stages, then the introduction of modern and therefore more fuel-efficient technologies have contributed to the economic development of the Polish economy and virtually to no increase in the consumption of resources. Between the years 2000 and 2012, resource productivity improved by 25%[4]. But still, despite the improvement in the efficiency of utilization of natural resources, the productivity in Poland is 2–3 times lower than in the richer countries. Along with the increase in the efficiency of the use of resources, the process of building an environmental infrastructure is underway. It is worth emphasizing that the purpose of the significant resources allocation – the protection of the environment is guided by 7–9% of all expenditures for investments in Poland, which is 2–2.5 billion Euro per year. Only 20% of this amount comes from the EU funds. Examples of these investments from the years 1995–2012 are: a wastewater treatment plant, which was opened with a total capacity of 4.3 million m3 per day, equipment to capture dust pollution of air with a capacity of 2.2 million tonnes per year and an equipment for capturing of gaseous pollutants with a capacity of 2 million tonnes per year. As a result of these investments, there has been a significant reduction of emissions and improvement of quality of the environment, particularly water quality in rivers and lakes, and air.

On the other hand, the period of transition, characterized by rapid economic development and the creation of a consumer society foundations, brought new threats to the environment. These are primarily:

- mass motorization with increasing emissions and fragmentation of the landscape through the construction of new roads,
- an increase in the mass consumer waste, including packaging,
- progressive intensification of agriculture, together with the increase of the famr size, which threatens biodiversity,
- rapid spread of cities – between the years 1990 and 2012 the share of agricultural land and non-forest lands of the total area of the country has increased from 12.7% to 22%,
- loss of biodiversity – progressing from the western part of Poland eastward. The largest share in the transport, agriculture and small and medium-sized enterprises, localized on natural sensitive areas,
- excessive uncontrolled tourism (also in relation to the areas protected by law).

Moreover, despite significant progress, the quality of water still leaves much to be desired. Furthermore, while the years 1990–2012 had shown a decrease of emissions of key pollutants, from 2004 the rate of decrease has slowed down significantly.

III. Agricultural landscape in Poland – current state

Sustainable development of agriculture, food and forestry, in relation to Poland, requires adaptation to the national specificities resulting from the structure of Polish agriculture and the natural conditions. This applies to all specific objectives: access to food, increased productivity, equal access to agricultural land and sustainable agriculture.

Polish agriculture, both in terms of the area of arable land, as well as in terms of the level of development and modernization that has occurred in recent years, especially after the accession to the European Union, is able not only to ensure food self-sufficiency of the country, but also produces a surplus products allocated for export. In recent years, Poland has become a major exporter of fruits, eggs and meat products. The increase in production is, however, largely at the expense of increasing pressure exerted on the natural environment.

Until the mid-twenties, Poland was an agricultural country. In the 1950s, over half of the working population was engaged in agriculture, and agriculture formed almost 40% of the GDP. In 1989 (the beginning of political and economic transformation), agriculture still accounted for 26.4% of jobs and 12.8% of the GDP: three times more than in developed countries. Polish agriculture has a diverse character. On the one hand, there are small farms with surface area from 1–10 hectares, which form 75% of the total number of farms (in absolute number 1 405 700)[5]. According to the Main Statistical Office (2017) they use only 28% of the agricultural land. On the other hand, there are also farms operating on

larger areas (over 10 hectares), whose total share in the total number of farms is around 25% (including the largest farms, above 50 ha – 2.5%) and they use about 72% of the agricultural land[6].

[2] Karaczun, Kassemberg, Owczarek (2015)
[3] Wilkin (2014)
[4] Eurostat
[5] Sobiesiak-Penszko, Pazderski, Jakubowska-Lorenz (2019)
[6] Agrifood Atlas (2017)

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Polish rural landscape is diverse both internally and regionally[7]. While in the west and north – western Poland it is dominated by large farms and intensive agricultural production, in central and southern Poland small farms prevail producing mainly for their own needs. Nationally, only about 20% of households produce for the market. Most of them produce only or mostly for their own needs. This results in a varying degree of sustainability of production. In some parts of the country (central, south, and southeast of the country), agricultural production is sustainable from the environmental point of view, not exerting undue influence on it, but at the expense of economic efficiency – low production (mostly for own consumption) and lower farm incomes. Other regions (northwest of the country) are dominated by large intensive farms, or even industrial production, with a strong, negative impact on the natural environment, but creating positive economic results and generating significant surplus of crops. Strengthening the positive trend necessitates a differentiated policy for individual regions and differentiated agricultural policy instruments, aimed at achieving different goals. This is partly implemented through diversification of activities that will be supported under the provincial (regional) operational programs supported by the EU and partly through diverse possibilities of application of agricultural policy instruments in relation to the location of the holdings (agricultural subsidies aimed at less-favoured areas, support for regional differences agri – climate – environment, etc.). Finally, it is also implemented through creating special programs for underdeveloped areas (e.g. Eastern Poland Operational Programme co-financed by the EU in the period 2007-2013).

IV. Equal access to land

From the point of view of the sustainability of agricultural production, one of the most important factors is to ensure adequate protection of the agricultural land against its permanent transfer to other purposes. Whilst the current technology allows us to perform soilless cultivation, its nature does not have traits of sustainable production.

Agricultural land and forestland in Poland are protected under the Act on the Protection of Agricultural and Forest Plants. On the basis of this law, only land of the lowest fertility category may be used for non-agricultural purposes.

Allocating agricultural land of the highest quality for non-agricultural purposes requires the consent of the Ministry of Agriculture and Rural Development, and the use of forestland for other purposes requires the consent of the Ministry of the Environment (in the case of forestland owned by the state) or marshal of the province (in the case of private forests). For excluding land from agricultural production, fees are charged for both land exclusion and also for its later use.

Food production is a major function of Poland's agricultural sector. It ensures Poland's food self-sufficiency and generates an international trade surplus. Since 2004, the value of food exports from Poland has increased over four-fold. But the growing pressure of urbanization on rural areas threatens this state.

Despite the law to protect farmland and forestland, every year significant amount of farming areas are converted to non-agricultural use. Between 2015 and 2016 alone, over 5 200 hectares of farmland, including over 3 200 hectares of the soil of the highest quality, were lost this way. This is the equivalent of shutting down 570 medium-sized farms, out of which more than 350 cultivate the best soils. This is the result of inefficient spatial planning, which leads to cities sprawling into the rural areas, of road building and the excavation of open cast mines for lignite and minerals. Because a mere 3.7% of Poland's agricultural land is classified as having "good" or "very good" quality, protecting this precious resource must be a priority. The high quality of Polish food is one of its attractions, but this can be maintained only if the country's agriculture is sustainable. Unfortunately, the pressure to make profit is replacing traditional crop and animal production methods.

Transformation of agricultural land to non-agricultural purposes, the abandonment of afforestation and sustainable use means that between 1989 and 2012 agricultural area decreased by 3 677 000 hectares (with approx. 18.7 million hectares in 1989 to 14 million hectares). Arable land decreased in a similar extent (about 3.419 million hectares). This means a reduction in the potential production of Polish agriculture by more than 20% in less than 25 years. Further loss of agricultural land at this rate, especially the land of the highest quality, may mean reduction of life expectancy of agricultural production and the loss of Polish food security. Therefore, from the point of view of sustainable agricultural production, the introduction of stricter requirements to protect agricultural land against its transfer to non-agricultural purposes should be regarded as a priority, particularly by improving the land management policy in Poland.[8]

In addition to protecting agricultural land against non-agricultural use, an important factor in the efficiency and sustainability of agricultural production is the existence of a land market, where producers interested in increasing their production can acquire land for cultivation. Unfortunately, the land market in Poland is not very popular. Usually, the owners of small areas give land for lease, and they themselves receive payments from the EU.

The result is that agricultural land prices in Poland are relatively high. Since the end of 2004, when Poland joined the European Union, agricultural land prices in Poland increased by 380% and currently it is about 6.5 thousand EUR/ha. It is impossible, however, to assess whether this state is due to the real increase in the value and the expected benefit of its cultivation (theoretical value of agricultural products and subsidies per hectare of land in Poland is approx. 1.6 thousand EUR/year), or other factors – speculative activities and the lack of actual marketing in the land market in Poland .

The land market is no longer one of the main barriers to increasing agricultural productivity. It allows the concentration of land on farms producing for the market. Changes in this area are very slow (Table 1), still almost 50% of agricultural land is owned by farms with an area of less than 15 hectares.

In 2012, 1.8% of the largest farms had approximately 22.3% of agricultural land. Fragmentation of production is intensified

[7] Krasowicz (2012)

[8] Egospodarka (2015)

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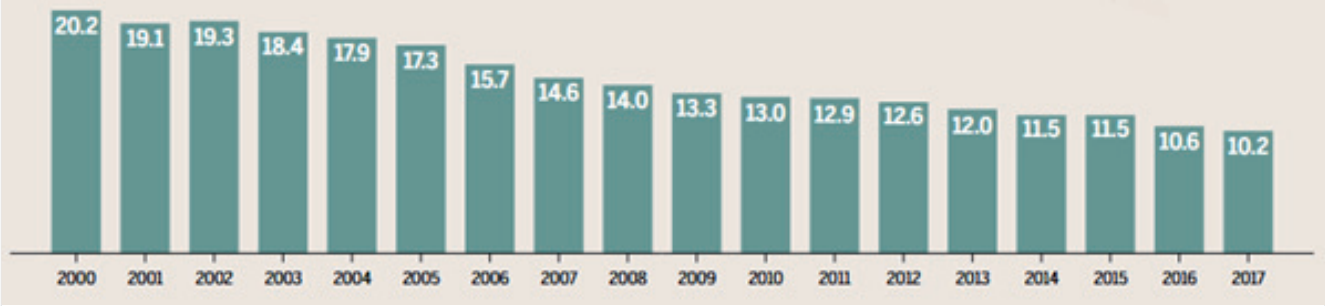
Table 1: Farms by size groups in years 1988 - 2017

	Year					
	1988	1990	1996	2007	2012	2017
Number of farms (in thous.).	2 167.6	2 137.5	2 041.4	1 804.1	1 476.7	1 405 700
1 – 2 ha (%)	18.7	17.7	22.6	23.4	20.2	18.7
2 – 5 ha (%)	34.8	35.1	32.7	34.0	32.6	32
5 – 10 ha (%)	29.3	29.8	25.5	22.2	23.8	22.5
10 – 15 ha (%)	11.2	11.3	10.6	9.2	9.8	10.1
15 – 20 ha (%)	6.0	6.1	4.4	4.3	5.0	5.0
20 – 50 ha (%)			3.7	5.7	6.8	7.7
> 50 ha (%)			0.5	1.2	1.8	2.5
< 1 ha (%)						1.5

Source: Baer-Nawrocka, Poczta (2014), Sobiesiak-Penszko, Pazderski, Jakubowska-Lorenz (2019)

Figure 1: Share of agricultural workers in total employment in per cent in Poland in period 2000- 2017



Source: Agricultural Atlas (2019)

also by the fact that majority of farms have agricultural land scattered in several plots, often located in a considerable distance.

As a result of many historical, economic and cultural factors, changes in the shape of the area structure of farms are slow. However, there is a tendency to slowly decrease the number of the farms with the smallest area (up to 10 hectares), and to increase the number of farms with more than 20 hectares (in 2010, farms with 20 hectares to 49.99 hectares accounted for 6.4% of all farms, in 2017 - 7.7%) and farms over 50 hectares (between 2010 and 2017, the share of these farms increased from 1.8% to 2.5%).

In 2018, farms covered 16.4 million ha of land. According to the Central Statistical Office (2019), last year the number of farms with arable land was about 1 million 425 thousand which covered 16.4 million ha of land. This is 1.4% more than in 2017. Let us add that farms with an area above 1 ha of agricultural land were around 1 million 401 thousand (including 1 million 180 thousand having sown area). In 2018, the number of farms over 500 ha occupied 6.9% of the total land area and the total number was 759[9].

In 2017, the 20% of the biggest farms received the lion's share - 74% - of the direct (area) payments. The remaining four-fifths of farms had to be content with a little more than one-quarter of the funds. The focus on area payments meant less money was available for agri-environmental programmes or to support sustainable rural development.

As a result, the EU funds had only a modest effect on reducing inequalities between farms in different regions. The income disparities between farmers increased significantly.

V. Aspects of structural development of Polish agriculture

Since 2000, the number of people employed in agriculture has been gradually decreasing. In the period from 2001 to 2017, the share of people working in agriculture reduced twice. This is a positive aspect. A less optimistic process, however, is the slow change in the structure of farms. Based on the Central Statistical Office's data, 12 276 500 hectares are used by 1 141 000 family farms with an average area of 8.7 hectares. The next group of users is both family and non-family workers. There are 11 100 such holdings occupying an area of 823 100 ha. The average area is 74.2 ha. Last group consists of farms based 100% on a hired work force occupying an area of 1310 000 ha. There were 3 700 of such farms with an average area of 354.1 ha.

As mentioned in the introduction of this study, although considerable fragmentation of farms can be seen beneficial in terms of biodiversity, from the point of view of sustainable development, an environmental, social and economic balance

[9] Central Statistical Office (2019)

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should be reached. Excessive fragmentation of production and the production costs increase significantly which can lead to a simplification of the production. Moreover, it encourages production performed in a manner inconsistent with the principles of good agricultural practice. Therefore, a model should be developed in a way that it allows for concentration of agricultural land in farms with an average size of about 30 ha.[10]

VI. Sustainable agriculture

Poland's farms now fall into three categories. About 20% of farms are big producers that sell all of their output. Within this category, some farms use highly intensive production methods. They sow large-scale crop monocultures, use huge amounts of mineral fertilizers and pesticides, and simplify the rotation of crops. This has an enormous impact on the environment, it:

- degrades the soil and landscape,
- reduces biodiversity,
- pollutes groundwater and surface water.

Industrial animal raising methods such as caged production or year-round confinement cause suffering to animals. These methods also produce huge amounts of slurry, contaminating water and soil. Industrial agriculture also inhibits the development of rural areas, leading to depopulation. Because the farmers who for years have applied traditional crop and animal production methods are no longer able to compete with big farms, they give up farming altogether.

At the other end of the scale, the smallest farms maintain the land in good condition but produce either nothing (about 15% of farms) or as much as they need for their personal consumption (about 10%). Many of them have been forced out of the market by the growing competitiveness of the large farms.

The third category is also the largest. It includes over half of all Polish farms. These farms are trying to survive through commercial production but they are too small to benefit from economies of scale. As a result, they seek a competitive edge by specializing or by cutting costs – for example, by simplifying crop rotations or reducing liming and the use of organic fertilizers. Such practices are important to maintain the environment. A major challenge for agricultural policy is to preserve these farms and ensure that they can produce food in accordance with good agricultural practices. The farmers who manage these enterprises are crucial for the sustainable development of rural areas. By maintaining land in good condition and by producing food less intensively than big farms, they have a positive impact on the environment, preserve biological and landscape diversity and counteract the depopulation of rural areas.

Sustainable agricultural production method is characterized by the use of fertilizer nutrients adjusted to the needs of the plants. Total consumption of mineral fertilizers remained in Poland since 2005 at a similar level of about 20.5 million Mg in 2017 and it is almost 30% lower than in the 80's and in 1990, but it is almost two times higher than in the first half of the 90's. This increase can be linked to the average consumption of fertilizers per unit area of agricultural crops, which in the period 1991 – 2012 has increased twice: in 1991 it amounted to approx. 62.1 kg/ha, and in 2017 already approx. 125 kg/ha. Although the average consumption of fertilizers in Poland is not high, in areas exposed to pollution by nitrates from agricultural sources of nitrogen dose allowed in organic fertilizers (manure) up to 170 kg (in pure ingredient/ha), the method of fertilization differ significantly from the principles of sustainable agriculture. The commodity demand leads only the largest farms to constantly monitor the soil nutrients and on its basis to prepare annual plans and to apply fertilizers. Other fertilizers are used in a random manner and it is not very controlled. The result is that agriculture is the main source of eutrophication in Poland.

On the other hand there is a worrying drop in calcium fertilization (to de-acidification of soils) of 117.2 kg/ha to approximately 34 kg/ha). This creates a significant threat to the stability of agricultural production due to the high proportion of acidic soils in Poland. In an acidic environment, easily accessible to plants, there remain contaminants in the soil – especially heavy metals, but also pesticide residues. Acidic soils have a limited production capacity, which causes a decrease in the size of the yield earned on them. Acidification of soils affects biodiversity. Problems of improper use of fertilizers and liming grow despite the broad educational activities carried out by the agricultural advisory services. The concern is also about the increase in the use of pesticides, which occurred after Poland's EU accession.

Although the data presented in the Figure 4 do not fully reflect the size of the consumption of plant protection products, as the present volume of their sales in the Polish market, it is likely that they accurately reflect the growing trend of increased consumption of pesticides in the Polish agriculture. According to these data, the current consumption is three times higher than in 1991. It seems that in reality there has not been such a significant increase in the use of pesticides, but the data from the previous years were not very accurate (they inflated the data resulting from the adopted methods of statistical surveys). However, it can be assumed that the increase in the use of pesticides was due to the progressive specialization of farms and new intensive varieties and plant species. Positive development in this regard is the introduction of new standards for the use of pesticides and training of persons engaged in these efforts. This reduces the risk of environmental pollution as well as consumer health as a result of improper use of these chemicals.

VII. Technical infrastructure as important factor of rural development in Poland

Rural areas are not only a place of agricultural production and farming, but also because of favourable environmental conditions, more common place for living, which would be impossible without an efficient modern infrastructure. The phenomena are benefiting from the changes of common agricultural policy aiming at creating conditions for development of rural

[10] Agriculture Atlas (2019)

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areas in the direction favouring the development of society. As a result of the support of society development in rural areas and construction of necessary infrastructure, the accessibility of the areas outside the city increases for more people. This results in increase in property values and better management of land. This favours the rationalization of land use in rural areas and the competitiveness of agricultural production. In the past, the state did not pay proper attention to the development of technical infrastructure. As a result, a barrier to the development of not only agricultural production but also to the development of rural society was formed.

An essential condition for the effective functioning of the economy is the development of rural infrastructure, including technical infrastructure. The production in large areas is impossible without roads, efficient transport, communications, water supply and energy. The lack of waste collection systems and sewerage systems threatens the natural environment and the functioning of rural settlement. The large spatial dispersion is one of the main difficulties in the development of infrastructure in rural areas. The total number of villages in Poland is 52.5 thousand, including 43 thousand villages and 9.5 thousand hamlets and settlements/colonies[11]. In numbers, rural villages with less than 100 people constitute 15%, 66% are villages inhabited by 100 to 500 individuals, 13% by 500 to 1000 individuals and only 6% of villages are inhabited by more than 1 000 people. According to the data of Central Statistical Office, there are 18 200 (32%) compact villages (with distance between farms up to 45 m), 27% villages with dispersed housing (just above 200 m) and 41% with intermediate distances between farms[12].

The confirmation of the importance of these problems is the inclusion of the level of equipment in rural areas with technical infrastructure by the World Bank as the main factor for the development of rural areas and agriculture. In the opinion of the World Bank, infrastructure not only has a direct impact on the quantitative level of the agricultural production but also on the development opportunities of these areas in order to attract domestic capital and investment services. The EU policy, conducted in the infrastructure development for many years, aims at creating conditions for its availability in all EU countries in order to diminish the civilization gap, separating the rural areas from the urban areas, and to create equal opportunities of competitiveness in the rural areas. An equally important aspect taken into account by this policy is to prevent the depopulation of rural areas, which has an adverse impact on the sustainable development of the countries. A modern village is no longer synonymous to agriculture, but it is different from the city as a place for life and work of various groups of people that apart of diverse professions, form a community with common cultural issues, traditions, norms of coexistence and interests. Awareness and environmental sensitivity of the inhabitants of the rural areas will be shaped not through orders and penalties, but foremost, by education. As long as farmers do not benefit from the environmental protection, they will not be interested in maintaining clean environment. Environmental education in Poland is generally of negative nature. It is based on providing information on activities that harm the environment and their consequences (often frightening), and does not give tips, recommendations or advice how the problems can be solved. Neglecting this step may result in obtaining the suspension of pro-ecological activities of local communities, struggling with the problem.

Environmental protection is a complex issue especially in the rural areas. Sustainable development of rural areas is the way of managing, which links economic, social and ethical principles with ecological safety. This may be reached by proper management, directed on cautious usage of ecosystems' self-controlling mechanisms, with the progress of science and technology. Apart from the above-mentioned facts, natural resources should be exploited without interruption of the ability of their self-renovation. Increasing production of biomass may be treated as an effect of the increase in the productiveness of the resources, which means introduction of new technologies and, at the same time, protection of resources and retaining of the high quality resources for the future generations.

VIII. Conclusions

Evaluation of Polish agricultural sustainability is not clear. On the one hand, there is improved economic situation of farmers, increasing agricultural productivity and produced added value by the sector. Through the effective use of the EU funds the improved infrastructure in the rural areas has increased the number of households connected to the water supply and sanitation. Rural areas have begun to operate the company responsible for the proper management of waste. EU programs also allowed farms to be better equipped by machinery and equipment necessary to conduct effective production. The introduction of new technology and modern machinery has increased the efficiency of agricultural production - increased yields of crops and the efficiency of livestock production, which increased the income of farmers.

However, there are negative phenomena too. One is the aging of the rural population and rural exodus of young people. The latter one has become massive after Polish accession to the EU and the opening of the labour market in more developed countries (United Kingdom, Germany). According to data from the end of 2018, 2.5 million Poles live in emigration, of which 90% remains in Europe. The number of Polish citizens who decided to move out of the country systematically was 2 million in 2010. Although to a large extent, this process prevents the rural unemployment, in many areas it leads to the problem of consequences on farming. Despite this, the market did not develop the land, making it difficult to increase the efficiency of agricultural production.

An important problem is the social stratification of the rural income. Besides, modern medium and large farms often operate more socially, what does not lead to agricultural production but producing only for their own needs. This creates important agricultural policy dilemmas - whether it should support the household perspective and combat poverty and social exclusion. In the opinion of some experts, only approx. a 100 thousand farms (whose income exceeds 16 ESU) in Poland has a chance to develop and achieve parity income. In addition, 100 - 150 thousand lower income households can produce

[11] MRiRW (2014)

[12] Wierzbicki, Krajewski (2004)

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goods, but their profitability will depend on the possibility of obtaining additional income outside of agriculture. But will the agriculture, in which instead of the usual 1.5 million farms remain only 200 000 – 250 000, be the sustainable agriculture?

Polish accession to the EU has brought a number of positive changes. Access to the EU funds for the rural development has allowed to accelerate the process of building the infrastructure to protect the environment and to implement the principles of the Common Agricultural Policy. Farmers need to apply the principles of the Code of the Common Good Agricultural Practice, maintaining agricultural land in good agricultural condition and implement the requirements of Cross Compliance. Access to the agri – environmental subsidies for organic farming meant that there significantly increased the surface on which method of agricultural production is subordinated to the requirements of the environmental protection and nature conservation.

Rural areas are changing fast, both in Poland and worldwide, as they adjust to globalization. Some of these processes – industrial farming, rural depopulation, the conversion of farmland into the residential suburbs, the loss of local culture – are negative, and pose a threat to the multifunctionality of the rural areas. In Poland, no measures have been implemented to counteract such changes. Agricultural policy needs to give more support to the many functions that the countryside performs in addition to its food-producing role.

Unfortunately, many environmental problems still remain unsolved, and the membership in the EU has led to the emergence of new ones. As a particular threat should be regarded the earlier discussed loss of agricultural land and transferring of agricultural and forest land (including the highest class) into non-agricultural and non-forest purposes. Intensification of production is the threat to biodiversity – both through increased consumption of fertilizers and pesticides, and by simplifying the landscape (removal of copper-field, creating large areas of monoculture crops) and crop rotation.

Therefore, the most appropriate summary is that Polish agriculture is not excessively balanced or unbalanced. The process of the European integration and the introduction of instruments of the Common Agricultural Policy have created an opportunity that will support a sustainable agricultural model that will be based on medium-sized farms, leading to not very intensive agricultural production. The construction of such a model will, however, require a significant number of educational activities and compliance with all tools and instruments used by the state in relation to the agriculture and rural areas. Producing high-quality food is an essential role of rural areas. But the countryside has also other important functions. It is a home to many people, and it plays a major part in maintaining the natural environment. Unfortunately, these functions do not get enough support in Poland.

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