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mgr Sławomir Mirowski
Department of Civil Law and Private International Law
Institute of Civil Law
Faculty of Law, Administration and Economics
University of Wrocław

ABSTRACT OF THE DOCTORAL DISSERTATION CIVIL LAW CONSTRUCTION OF THE ALLOTMENT TENANCY CONTRACT

The main aim of the dissertation is to provide thorough analysis of civil law complexities of the allotment tenancy contract in Poland. It is important to point out that allotment gardens in Poland run exclusively by the Polish Allotment Federation (the PZD) occupy 40 394,4839 ha. What's more the number of allotment gardeners maybe as high as 4 million. This shows a potential of allotment gardens as a research issue both in social and economic aspects which affect legal research. However, the scientific importance of civil law aspects of the allotment tenancy contract has not yet been fully discovered. As a result, this issue has not been explored in legal academic writings and commentaries.

In author's opinion normative regulation affecting current state of the structure of the allotment tenancy contract in Poland presents both theoretical and practical challenges that require resolving through in-depth analysis. The designated scope of research enabled formulating the main research hypothesis according to which it was a reasonable action of Polish legislator to introduce a new, separate from the tenancy agreement defined in the Civil Code legal institution.

Dissertation consists of eight Chapters which enabled the author of this thesis to fully present scientific consideration in a multifaceted and at the same time practical way.

Chapter I is devoted to the history of the allotment movement in Poland. Scientific considerations regarding history of allotment gardens in Poland have been divided into three distinct periods: pre-1918, 1918-1945 and post-World-War II (1945). The analysis of the related legal framework led to a conclusion that depending on given time in history the use of allotment gardens expressed in related policies has been adjusted to the current political, economic, and social situation. It should be noted that in this Chapter the author focused not only polish policy

related to the allotment gardens but also on the international context. As a result, author provides an analysis of allotment movement development in Germany, France, and England.

In Chapter II general characteristics of the family allotment gardens (Polish: "*rodzinne ogrody działkowe*") is discussed. Emphasis was given to the jurisprudence of the Poland's Constitutional Tribunal. The main aim was to present shortcomings of acts previously in force and to compare them with the Act on Family Allotments of 13 December 2013. This Chapter also outlines the social, environmental and health effects of allotment gardens. Allotment gardens as green spaces in urban landscape can be perceived as a countermeasure to a negative impact of air pollution, dense urban development, and noise which without a doubt lower the quality of life in cities. In this Chapter jurisprudence regarding groundwater abstraction is explored to determine whether the usage of family allotment gardens may be recognized as an agricultural one.

The scientific considerations made within Chapter III are concentrated on the issue of the essence of the allotment tenancy contract. This Chapter is concerned with the analysis of the core elements of the above-mentioned contract. An important issue discussed in this Chapter is what sets apart the allotment tenancy contract from tenancy contract regulated in the Polish Civil Code. Detailed analysis has clearly showed that due to the unique nature of an allotment gardening Polish Legislator was required to introduce a new legal institution in a form of an allotment tenancy contract.

Chapter IV examines how parties of the allotment tenancy contract are defined within the Act on Family Allotments of 13 December 2013. In this Chapter the author presents rights and obligations of both allotment tenant and allotment associations.

Chapter V presents the problem of internal law of the allotment associations completing statutory solution. It is worth mentioning that despite its practical value this issue has not been broadly discussed in legal academic writings in recent years. Scientific considerations made in this Chapter are focused primarily on statutes, regulations and resolutions adopted by competent bodies of the allotment associations. Legal nature of internal law of the allotment associations and its influence on obligations of parties of the allotment tenancy contract is also discussed in this Chapter.

Chapter VI is devoted to transfer of rights to an allotment garden. Key elements of transfer of rights to an allotment garden procedure are explored in this Chapter. The author of this thesis presents arguments disapproving form of transfer of rights to an allotment garden (written contract notarized by a notary public) adopted in the Act on Family Allotments of 13

December 2013 as it may be viewed as a factor which has a negative impact on legal transactions.

Considerations made in Chapter VII focus on the cessation of the right to an allotment garden. Safeguards prescribed by law to guarantee protection of gardener's rights are among the most important aspects of issue discussed in this Chapter. It is worth noting that as a part of the conducted research the author has analyzed not only provisions of the Act on Family Allotments of 13 December 2013 but also provisions of Poland's Water Law regarding land taken up by surface waters. This allowed to show that normative regulation regarding civil law complexities of the allotment tenancy contract in Poland is not restricted by the Act on Family Allotments of 13 December 2013, but it must be construed as a whole system considering acts from across all branches of law.

Chapter VIII analyses legal consequences of gardener's death. One of the main conclusions is that these consequences differ when it comes to the right to an allotment garden and the ownership of plants, structures, and utilities located on a plot. For this purpose, it is shown that Polish Legislator introduced exception from *superficies solo cedit* principle. This in turn led to another significant conclusion, that the ownership of plants, structures and utilities is of limited duration.

The research has been expanded with the analysis of the statutes, regulations, and resolutions of sixteen randomly selected allotment associations in Poland.

Dissertation concludes with the summary of the results of the conducted research.

Mirowski