

LEASE OF AGRICULTURAL LAND AS AN INSTRUMENT OF STRUCTURAL CHANGES IN AGRICULTURE IN THE CONTEXT OF THE THEORY OF INSTITUTIONAL ECONOMICS

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Abstract. The paper analyzes legal regulations and statistical data on a lease and assesses their influence on structural changes in agriculture. Next, it presents the issue of lease in the context of the theory of institutional economics (in the framework of old and new institutional economics). The research has proved that a lease is an effective instrument of structural changes in the Polish village helping not only to create and enlarge the new farms but also to modernizing the existing ones. Currently, a lessee of agricultural land is an entity which, in order to run an effective business activity, has to conclude various agreements, file applications, invest. The development of a lease is part of a theory which promotes the image of an entrepreneurial person, entangled in social and institutional relationships, who enters into various agreements.

Key words: lease, agricultural land, agrarian structure, new theories of institutional economics, Common Agricultural Policy

INTRODUCTION

A lease is a legal institution of a centuries-old tradition. In Poland, it is a popular legal title to organize and enlarge both family farms and corporate farms. A lease has become so popular due to the fact that it does not entail such large costs, which, for instance, those incurred by purchasing agricultural land. A lessee can invest his/her income in other production means or in the development of a farm. In recent years diverse structural changes have been noticed in Poland. The surface area of agricultural farms is bigger and bigger and there are more and more farms whose production is intended for sale, namely commercial farms. These units are more and more modern and the agricultural producers have

to pay attention to the protection of the environment. Moreover, since Poland joined the European Union and started being covered by the Common Agricultural Policy (CAP), the principles of running an agricultural activity have changed. Only a stable activity makes it possible to effectively use financial aid. A lease has contributed to the development of many modern agricultural farms. It was also a lease that helped many young farmers to be granted the European aid [Suchoń 2012].

In recent years, numerous laws on lease have been amended, for instance, the Act of 19 October 1991 on Managing Agricultural Property of the State Treasury¹ and the Act on 11 April 2003 on Formation of Agricultural System² and other regulations. New executive orders on the European funding, including the issue of leased land have been passed. It is, therefore, important to review legal aspects of lease in a modern way with the needs of current economic reality taken into consideration.

It is worth indicating that a lease is a popular legal title of land possession, which has been used in Western Europe for many years. What is more, the development of lease is a concern of an institutional theory of economics, which promotes the image of an entrepreneurial person, entangled in social and institutional connections, who makes various agreements³ – while institutions constitute a certain type of social structure, create the conditions to develop or limit a business activity, including an agricultural activity and the protection of public goods.

The main purpose of this article is to make an attempt to determine if legal regulations on lease encourage the application of that institution as an instrument of structural changes in agriculture or if these regulations make it difficult to do so as well as whether they include social and economic changes in the village. A complementary purpose of the article is to present the statistical data illustrating the impact of lease on structural changes as well as to indicate some connections between the evolution of the lease of agricultural land and the changes taking place in the institutional theory of economics.

The basic research method is the review of legal texts and the literature on lease of agricultural land and theories of economics.

DIRECTIONS OF CHANGES IN LEGAL REGULATIONS ON LEASE OF AGRICULTURAL LAND

On Polish lands the lease of agricultural land started to be used more often in the 19th century as a result of the reforms connected mainly with abolishing serfdom and granting property rights to peasants [Stelmachowski and Zdziennicki 1987]. After the World War II, until the Civil Code was adopted in 1964, the lease of agricultural land was regulated by the Polish Code of Obligations. While preparing the Civil Code, the legislator assumed, based on popular in those times idea of liquidating individual agriculture by

¹ Consolidated text, Journal of Laws of 2012, Item 1187, as amended.

² Consolidated text, Journal of Laws of 2012, Item 803, as amended.

³ A person making different types of agreements, filing applications, etc. is accurately called by Lisowska homo contractor [2004]. Such a description is ideal for a farmer (agricultural entrepreneur) – lessee.

means of collectivization or creating state companies of agricultural economy, that a lease is not an instrument impacting the right usage of agricultural land and the improvement of an agrarian structure in the country [Pańko 1975]. That is why so few provisions of the Civil Code of 23 April 1964⁴ relate directly to the lease of agricultural land. In spite of that situation, the lease, both a private one as well as the one from the National Land Fund, was popular in agricultural relationships. Political changes in Poland, which started at the beginning of the 1990s, resulted in substantial changes in legal regulations. A particular importance is given to, among other things, the changes made to the regulations on lease included in the Civil Code under the Act of 28 July 1990⁵ [Suchoń 2006].

A very significant legal act regarding the development of lease of agricultural land in Poland was, undoubtedly, the Act of 19 October 1991 on Managing Agricultural Property of the State Treasury and on Changing Some Acts. Under that Act, as of 1 January 1992, the Agricultural Property Agency of the State Treasury started its activity. The main task of the Agency was to take over all state agricultural property to the Agricultural Property Reserve of the State Treasury and to manage that Reserve in compliance with the principles laid down in the aforementioned act and its executive orders [Zieliński 1993].

For many years, lease was the main form of managing property from the Agricultural Property Reserve of the State Treasury – Tables 1 and 3 [Zawojcka 2004]. The reason for a relatively small sales was, among other things, the ban on selling the property from the Agricultural Property Reserve of the State Treasury which was subject to claims made by the former owners. Moreover, in the 1990s, due to the economic situation, there were not many entities interested in buying the land although the land prices were low. By the end of December 2010, the Agricultural Property Agency took over the properties of a surface area amounting to over 4.7 million ha, 1.54 million ha of which was leased [ANR 2011].

Table 1. Leased land of the Agricultural Property Reserve of the State Treasury

Year	Surface area of land of Agricultural Property Reserve of the State Treasury (ha)
1994	1 950 450
1995	2 744 790
1996	2 928 082
1998	2 810 455
2002	2 407 000
2003	2 341 551
2006	1 905 607
2009	1 685 860
2010	1 586 816
2011	1 461 400
2012	1 319 107

Source: based on the APA reports.

⁴ Original text, Journal of Laws, No, 16, Item 93.

⁵ Journal of Laws, No. 55, Item 321.

The regulations on lease were included in Chapter 8 of the Act of 19 October 1991 – Lease and Tenancy and the regulations issued under that Act. In the matters not regulated in the aforementioned laws, the provisions on lease included in the Civil Code apply. The credit should be given to a statement that once the Act on 19 October 1991 came into force, a new model of lease, as an active instrument of the reorganization and indirect privatization of state land, has been introduced [Prutis 1998]. Before 1992, the lease of agricultural land was based mainly on leasing lands in order to enlarge the surface of already existing agricultural farms. After the Agricultural Property Reserve of the State Treasury started its activity, the lease of agricultural land has often been the main title to organize independent agricultural farms. In the first phase of privatization, at the beginning of the 1990s, it was necessary to pass the state property to private entities in order to ensure the continuity of production. The aforementioned state legal person, then, leased out large areas of agricultural land. There were no surface area limits, which contributed to the set up of many large farms [Lichorowicz 2003]. In the following years, due to the change in the state policy on agriculture and making family farms the basis for the agricultural system, the Agricultural Property Agency started to support the development mainly of those farms. Nevertheless, for example in 2010, the biggest leased surface area covered the farms amounting to more than 100 ha (Table 2).

Table 2. Leased land of the Agricultural Property Reserve of the State Treasury according to selected area groups

Area group	Surface area of land of Agricultural Property Reserve of the State Treasury (ha)
2–4.99	46 303
20–49.99	167 983
100–299.99	271 897
300–499.9	270 393
500–999.9	234 821
1 000 and more	276 522

Source: APA report of 2010.

General statistical data for all land in Poland point out, however, that an average surface area is becoming bigger and bigger, which has been contributed by lease. For instance, in recent years the number of farms bigger than 50 ha has increased by 34% [Agricultural census 2010].

From the legal perspective, an important development was that the Act of 11 April 2003 on Formation of Agricultural System came into force. The Act introduced a definition of a family farm and individual farmer. A lessee also falls into the category of an individual farmer provided he or she runs a family farm and meets some other conditions. Since that Act came into force, the Agricultural Property Agency has been promoting mainly the development of family farms. This has manifested itself, for instance, in organizing limited tenders for the property lease or for the sale from the Agricultural Property Reserve of the State Treasury as only individual farmers can participate in such tenders. Since the legal regulations of 2003 have been amended,

however, little chance of making new lease agreements from the Agricultural Property Reserve of the State Treasury is given to a large-scale lessees.

There are also some limitations regarding the purchase of land from the Agricultural Property Reserve of the State Treasury. Significant changes regarding the lease of state land were made under the amendment of the Act of 16 September 2011 on Managing Agricultural Property of the State Treasury. Since that Act came into force, a lease as a tool of managing state agricultural land is less and less stable for a lessee. This results, among other things, from the procedure specifying that the Agricultural Property Agency, within 6 months from the date the amendment comes into force, will provide the lessees, in the form of a written notice, with a proposal of making changes to that agreement that 30% of the surface area of agricultural land which are the object of lease should be excluded from the lease. The procedure was not applied to the lease agreements if the total surface area of agricultural land from the Agricultural Property Reserve of the State Treasury held on lease by a given lessee on the day the amendment came into force, having made the exclusion, did not exceed 300 ha. Moreover, the Agricultural Property Agency relatively rarely organizes tenders for lease, makes new agreements or agrees to prolong lease. The province of Wielkopolska can serve as an example. This is an agricultural region, where lease has helped to set up many modern corporate farms and to extend some family farms (Table 3). For many years now the Agricultural

Table 3. Leased land in an area branch in Poznań (Piła branch excluded) in given years

Year	Leased land in total (ha)	Land returned to the reserve (ha)	Leased land without the returned land (ha)	Number of contracts made in a given year	Total number of made contracts at the end of the year
1992	14 191	0	14 191	22	22
1993	116 533	0	116 533	2 082	2 104
1994	174 971	4 693	170 278	1 432	3 536
1997	228 704	32 414	196 290	249	5 319
1999	234 529	48 096	186 433	279	4 470 (reform of the state, 2 017 contacts have been passed to other departments, 598 were obtained)
2000	266 451	65 652	200 799	226	4 696
2003	283 266	100 772	182 494	301	5 415
2004	290 419	109 822	180 597	331	5 746
2008	302 911	140 925	161 986	133	6 431
2009	305 224	145 436	159 788	93	6 524
2010	306 262	149 718	156 544	63	6 587
2011	*	*	150 818	35**	4 631**
2012	*	*	139 270	57**	4 307**

*Data not available.

**Without the contracts covering, among other things, the land under the buildings.

Source: based on data from the area branch in Poznań and the APA reports.

Property Agency has been mainly selling agricultural land (Table 4). The land is usually purchased by its lessees. These entities usually want to purchase the leased property but high prices and legal procedures often make it difficult [Suchoń 2006].

Table 4. Sold land of Agricultural Property Reserve of the State Treasury in given years

Year	Land sold from the Reserve (ha)
2007	103 667
2008	78 215
2009	102 423
2010	96 506
2011	125 134
2012	132 184
Total	2 336 015

Source: based on the APA reports.

Although the Civil Code does not provide the lessee with appropriate stability of farming the leased land, bigger and bigger interest in the lease of private agricultural land in the rural areas should be noted. The findings of economic research show that in the last ten years there has been a noticeable increase in the amount of private land lease. In 2000, one in eight farms consisted not only of their own land but also of leased one while in 2005 such a situation referred only to one in five farms. About 20% of farmers farm both on own and on leased land [Sikorska 2012]. The parties to an agreement for the lease of private land can freely decide on the terms of a lease agreement as most provisions on lease are not mandatory. As practice shows, however, leaving the parties the freedom to decide about the lease terms has usually a negative influence on the position of a lessee. The parties fail to include in the agreement many important issues. Moreover, the agreements are often made orally for an indefinite period of time, which does not guarantee the appropriate stability of lease.

After the Polish accession to the European Union, the principles of running an agricultural activity, also on leased land, have changed. The European funds, which were used not only by agricultural producers but also by other entities operating in rural areas, contributed to the modernization and structural changes in agriculture. It often happens, however, that the EU funds are granted provided that the agricultural activity has been run for at least 5 years. It is, thus, justified, to raise a question about the principles of granting financial aid for an agricultural activity run on the leased agricultural land. Having analyzed the regulations, it should be stated that the lessees can, admittedly, use a wide range of EU funds but they have to meet numerous requirements concerning the protection of the environment, keeping public health, well-being of animals, plant health, etc. Pursuant to the Article 7(6) of the Act of 26 of January 2007 on Payments within Direct Support Schemes⁶, if an agricultural plot is held in independent and dependent possession, the area payments can be granted to an independent possessor. It means that it is the lessee of

⁶ Consolidated text, Journal of Laws of 2008 No. 170, Item 1051, as amended.

agricultural land, actually farming these land, and not a lessor who is entitled to the payments within direct support schemes. At the same time, in order to be granted a uniform area payments and other payments defined in the legal act in question, it is necessary to meet numerous requirements, for example, all farmlands have to be maintained according to the principles within the whole calendar year in which the payment application was submitted. Lessees, although they are only dependent possessors, are entitled to use direct payments, payments for less favoured areas, agri-environment payments, for the modernization of agricultural land [Suchoń 2012]. It goes without saying that European funds constitute additional, highly important income for lessees but they also entail some limitations and changes to the run activity. This refers mainly to agri-environment programmes (e.g. ecological agriculture). Depending on a programme, a lessee gets either an administrative decision about being granted the European funds or he signs an agreement with the Agency for Restructuring and Modernisation of Agriculture.

One of the basic problems of Polish agriculture concerns too small and not modern farms. These problems require the change of an agrarian structure, which can be achieved by the European funds designed for, for example, agricultural producers starting to run an agricultural farm. The principles of granting the funds were laid down in the regulation of the Minister of Agriculture and Rural Development of 17 October 2007 on Detailed Conditions and Procedures for Granting Financial Aid under the Measure “Helping young farmers to set up in business” under the Rural Development Plan for 2007–2013. To be granted a bonus, currently amounting to 75 thousand PLN, it is essential to meet a number of requirements e.g. of a minimum surface area of an agricultural farm. To calculate it, a surface area of usable agricultural land constituting the object of the following should be added: ownership; perpetual usufruct; lease from the Agricultural Property Reserve of the State Treasury or from local government units if a lease agreement has been made for an indefinite period of time or for the period of at least 5 years but not shorter than 5 years after the aid was paid; lease from entities different than the ones mentioned above, if the lease agreement has been made: a) in the form of a notarial deed or if the agreement has a certified date and b) for the period of at least 10 years. Including lease in the minimum surface area of usable agricultural land got a positive reaction from agricultural producers who start running an agricultural activity.

A lessee whose farm includes the surface area of agricultural land exceeding 1 adjusted hectare or a special section of agricultural production is by law insured in the Farmers’ Social Security Fund (KRUS). They can also use KRUS insurance upon request provided that the statutory conditions have been met. Additionally, the lessee can apply for a refund of excise tax included in the price of diesel used in agricultural production and can use some agricultural tax reliefs, provided he or she is an agricultural tax payer.

LEASE OF AGRICULTURAL LAND IN THE EU COUNTRIES

An important role for the development of the lease of agricultural land in Western Europe was played by the European Economic Community (EEC), which established common agricultural policy for all the Member States [Jurcewicz, Kozłowska and Tomkiewicz 1995]. One of the most significant documents specifying the principles of the

EEC towards agricultural lease was so called Mansholt Plan of 1968 [Lichorowicz 1996]. The document included an express recommendation that the Member States should introduce such legal means and institutions which would contribute to the improvement and streamlining of their agrarian structure as well as would remove legal obstacles to running rational agricultural economy on the farmed land by direct agricultural producers. The Mansholt Plan pays a lot of attention to agricultural leases, recommending that they should be transformed so that the lessee's rights are protected and the lessee can purchase the leased land [Lichorowicz 1986].

The European Union has not issued any legal acts regulating in a general way of agricultural land lease. Pursuant to the Article 222 of the Treaty of Rome, that issue is regulated by internal legal regulations of the Member States [Lichorowicz and Czechowski 1996]. The lease, however, has often been used by the European legislator as an instrument of concentration of agricultural land aiming at speeding up the process of generation changes in agriculture and making it easier for young farmers to start an agricultural activity. This can be exemplified by the Council Directive No. 160/72⁷. In such countries as France or the Netherlands there is a protectionist model, giving an agricultural lease a special status, which *ex lege* has to be complied with by both a lessee and lessor. There are also, on the other hand, liberal systems, which allow the parties to a lease agreement to decide on most of the content of the lease agreement and interfere into a lease agreement only to a small extent by means of mandatory provisions of law. Liberal regulations are used by, for instance, Greece, Turkey, Luxembourg and the Great Britain. There are also, however, the legal systems which fall into the category between a protectionist and liberal system [Winkler 1997].

France is an example of the country where a lease is more and more popular and where we can observe its dynamic development – from 1963 when 48.5% of land was leased, through 2003 (63%), to 2007 when there was 74.1% of leased land and in 2009 more than 84% [Winkler 2011]. Legal regulations on lease of agricultural land have been continuously changing, taking into account the needs resulting from the practical application of the regulations. The change does not go, however, into a liberal direction, as in England or Wales. A French legislator tries to adopt the regulations allowing to keep balance between the rights of a lessee and lessor. The regulations on lease are included in the French Civil Code, French Agricultural Code and specific acts. Attention should be given to the introduction of ecological lease to the French legal system (beneficial from the perspective of the protection of the environment). Pursuant to the Article L 411 – 27 of the Agricultural Code, the ecological lease is a type of lease where a dependent possessor commits himself to take actions aiming at maintaining water resources, biological diversity, landscape and the quality of produce, soil and air, preventing natural threats and fighting erosion.

The requirements for fulfilling the agricultural practices focused on the protection of the environment, namely the protection of public goods, can be included in an agreement or inserted as an additional provision while carrying out the agreement. The agreements are made by a lessor, who is a legal person of public law, for instance, the Society for

⁷ Official Journal of the EC, L 96, p. 9.

Environmental Protection. Such an agreement can also relate to the land plots situated in the protected or ecologically valuable regions [Winkler 2011].

Due to the German reunification, the role of a lease in Germany in the 1990s also increased dramatically, especially in Eastern lands. It was a significant instrument while taking actions directed at improving the agrarian infrastructure in order to make it more similar to the conditions in the Western part of Germany [Suchoń 2013]. The lease of agricultural land played an important role in the transformation of the political system not only in Germany but also in some of the former Communist bloc countries in the 1990s. For example, in the Czech Republic, Slovakia and Hungary a lease was, and in some countries it still is, a common form of privatization of state-owned agricultural property [Swinnen, Buckwell and Mathijs 1997]. In Slovakia, for instance, the share of leased land in 2009 amounted to 96%. In general, the share of rented land in the EU-15 has been fluctuating around an upward trend, rising from about 50% in 1999 to 53.5% in 2009. [European Commission 2013].

Table 5. Share of leased land as a percentage of the total agriculture land in 2007 and 2009

Country	Share of leased land as a % of the total agriculture land (2007)	Share of leased land as a % of the total agriculture land (2009)
Belgium	67	74.0
Czech Republic	83	85.6
Bulgaria	79	88.9
Germany	62	69.6
France	74	84.7
Slovakia	89	96.1
Sweden	39	52.9
United Kingdom	32	43.1

Source: Eurostat after Ciaian et al. [2011], DG AGRI EU-FADN.

NEW THEORIES OF ECONOMICS AND LEASE OF AGRICULTURAL LAND

As the regulations concerning the lease of agricultural land evolved, the definitions of institutions in the theory of economics changed in a similar way. Such a reference makes it possible to analyze lease as part of the institutional economics.

T. Veblen, within so-called traditional institutional economics created in the 1930s, defined institutions as “prevalent habits of thought with respect to particular relations and particular functions of the individual and of the community” [Veblen 1971, p. 171]. A further analysis makes it possible to state that the Veblen’s institutions are created when mentioned habits grow in strength and becomes common for a given society or a group (takes a form of a socio-economical institution). The criterion of a “dominating type of behaviours” in the above-mentioned definition makes it possible to distinguish a large group of social institutions of a mainly informal character (instincts and habits). The second father of institutional economics, John R. Commons, believes that formal institutions established in a more top-down way are the most important. Commons indicates the

significance of collective actions in running a business activity as they create reasons for creating not only customary norms but also laws. Collective actions are connected with the operation of companies, state administration, societies, trade unions. Cooperation between these entities, for instance through contacts and transaction or organizational connections, requires clear legal rules [Staniek 2013].

It is necessary, at this point, to also refer to the most common and colloquial understanding of an institution as an entity taking part in an economic process – so-called economic institution (the category includes enterprises, governmental agencies, trade unions, universities and offices). The reference books refer to economic institutions as to “customary ways of regulating life processes of society with reference to the material environment” [Stankiewicz 2000] or as “any correlated behaviour of agents⁸, repeating under the same or similar circumstances” [Dopfer 1991].

Traditionally defined institutions are called institutional background. Institutional background of agriculture constitutes a collection of diverse institutions supporting market processes (supporting institutions). The reference books divide them on [Czyżewski and Matuszczak 2008]:

- “norms”, namely the legislations specifying the principles of functioning of the economy or of making contracts;
- “markets”, which include the following markets: financial, labour as well as goods and services defined as infrastructure enabling connections with these markets and increasing the mobility of production factors which are the object of transactions made there;
- “organisations”: this category refers mainly to public institutions carrying out an agrarian policy (agencies⁹), organisations supporting the export of agri-food products, Centres of Agricultural Consultancy as well as Agricultural Chambers and trade unions of farmers.

Within so-called new institutionalism, which is a collective name for a modern institutional trend which has been developing since the 1970s, it is possible to distinguish two main trends: neoinstitutionalism and new institutional economics (NIE)¹⁰. Not going into details about the differences and similarities of the methodological apparatus of both trends, it should be stated, based on the analyses, that the representation of institutions presented in the new institutional economics is much more useful. According to NIE, the

⁸ The notion of “agent” refers to a person carrying out tasks entrusted them by another person under a contract entailing delegation of rights. The presence of the contracts give the aforementioned relationship an economic character as the essence of the relationship is the allocation of resources. The analysis of complex relationships between the parties to the contract called a principal and agent constitutes the subject of study of so-called an agency theory (relationships of agency). The agency theory is an important part of analysing the social and economic processes (an analysis of mechanisms in the allocation of resources) within new institutional economic.

⁹ In the process of promoting a lease a very important role is attributed to the Agricultural Property Agency, which replaced the Agricultural Property Agency of the State Treasury.

¹⁰ This classification can be, however, perceived as debatable due to a big conceptual chaos in the literature on the subject (there is also a classification where new institutional economic is divided into neoinstitutionalism and new institutionalism).

institutions consist of formal and informal rules together with enforcement mechanisms¹¹. They aim at controlling individual decisions of entities and, at the same time, limiting uncertainty connected with a business activity. In that perspective, the institutions decide who takes decisions, which actions are allowed, which procedures are to be implemented, which information to provide and, finally, what a given entity gets thanks to the activity. Therefore, the institutions ensure a suitable structure of stimuli to take allocation decisions [North 1994b, Czyżewski and Matuszczak 2008].

The subject of research of both above-mentioned trends distinguished within new institutionalism is the dependence of economic results on institutional conditions of behaviours and institutional background. There is, however, a different approach to the social and economic development and the perspective of an individual. The NIE indicates an evolutionary character of the social and economic development, neoinstitutionalism emphasises the need to build models similar to neoclassical or Keynesian models. Neoinstitutionalism perceives units mainly as entrepreneurs who find their own interest the most important whereas NIE treats units as entities which combine individual interests with (common) interests of communities (groups, societies). References to public interest can be visible in the mentioned “production” by farmers-lessees (as part of agri-environment schemes) of so-called positive external effects. The aforementioned system of French ecological lease constitutes also an example of the usefulness of institutional perspective, in particular of public goods theories¹².

New institutional economics directs attention to market failures, including the problem of the unreliability of the market in providing public goods (market mechanism fails to reveal consumers’ preferences towards these goods and particular entities cannot participate in providing public goods since the total supply of these goods is created independently on the individual decisions of consumers). The unreliability of the market constitutes the reason for the state to provide public goods¹³. That is why, it can be stated that NIE calls for the interference of state institutions and their influence on generating public goods¹⁴.

¹¹ Main theories of the new institutional economics (a theory of a public choice, a theory of property rights, a theory of transactional costs or an agency theory) show the relationships between the functioning of traditional markets of goods and resources and extra-economic areas of social life. They analyze political and social phenomena in an economic aspect.

¹² A public good theory is one of the elements of a broader theory of public choice (public choice theory is also known as the economic theory of politics), which consists of economic theory of democracy, theory of groups of interest, common goods theory or an analysis of the rent purchasing mechanisms. All these theories are part of a trend of new institutional economics [Wilkin 2005].

¹³ According to one of the most common NIE theories, namely the theory of a public choice (economic theory of state by J.M. Buchanan) the state plays a double role in the economy: it guarantees that the constitutional principles are obeyed and ensures the production of public goods. The aim of correct “game rules” (constitution) is to limit the losses resulting from the operation of state bureaucracy so, in general, to economize a public sphere. The constitution describes: property rights, the way to exercise them, the boundaries of public and private sphere and the principles of providing public goods.

¹⁴ In the case of external effects, they can be removed or strengthened by means of establishing taxes and subsidies. This can be achieved based on Coase’s theorem (positive external effects) or Pigou tax (negative external effects).

To sum up, it is currently not possible to talk about one, coherent theory of institutional economics. What is common for all existing trends is the same credit given to the role of institutions in a social process of managing. The definitions and usage of “institution”, however, are different [Zawojńska 2004, Staniek 2013]. D. North, author of a commonly known definition, defines the institution as: “the rules of the game in society or, more formally, humanly devised constraints that shape human interaction. In consequence they structure incentives in human exchange, whether political, social or economic” [North 1994]. The aforementioned definition, in economic life, can refer to a lease as a formalized civil law institution, namely institution-norm. Within the theory of institutional economics, the institutions constitute a certain type of a social structure, create the conditions for development of or restrictions on an agricultural activity. The aforementioned analysis of the activity of the Agricultural Property Agency as an institution-organisation indicates that in its last period it creates conditions for the development of family farms and generates restrictions on the development and running of an agricultural activity on large-scale farms.

Among all the NIE issues we cannot overlook the discussion on the nature and forms of the contracts made by and between the participants of a social and economic life. Every process of exchange and performing a transaction entails the need to reach an agreement between the parties, to decide on mutual rights and obligations, namely to make a contract (Latin expression *contractus* means a contract, a deal between the parties defining the terms and conditions as well as deadlines and time limits).

With regard to the discussion presented in the article it is advisable to present the basic differences between land purchase agreements and land lease agreements in connection with the economic contract theory. It is necessary to refer to its definition based on a historical process of making exchange contracts. That classification comprises two basic types of contracts: historically earlier sales contract and later lease contract.

The content of a sales contract is generalized by Stankiewicz [2012, p. 108] in the statement that “a sales contract is an agreement between individuals who are equally neutral towards each other, defining a range of tasks that are to be completed in the future in the course of carrying out the contract”. A neutral character of the above definition means there are no reporting relationships between the business partners, they are equal before the law and a code of conduct relating to the exchange. The element of time, however, makes it possible to distinguish the relationships of the parties in a purchasing and selling action and the obligations of the parties going far into the future. The same author defines the concept of a lease contract as “an agreement between an individual neutral towards the risk and an individual who is against risk, defining a set of tasks which can be completed in the future in the course of performing the agreement”. The above definition covers also an issue of neutrality of the parties. From that perspective the parties differ in terms of their attitude to taken risk; one has a hostile attitude or he/she is simply afraid of risk, so he/she tries to hand over to a business partner, who is indifferent, neutral towards risk, the right of control over his/her actions. That situation entails different types of reporting relationship, a principal-agent situation, even if the right to control has been handed over by a business partner voluntarily.

As part of a lease contract it is possible to distinguish the next two types of contracts: a contract of lease of a physical object and a contract of renting a private property.

According to the former, a lessee gets, for a fixed period of time, not only the right to use the object but also to get income. In the case of the latter – only the right to use [Stankiewicz 2012, p. 108].

CONCLUSIONS

The research presented in the article together with the statistical data have confirmed that lease is an effective instrument of structural changes in Polish village. It helps both to enlarge and create new farms and to improve the existing units owing to, for instance, the European funds used by the lessees. To briefly sum up, it should be stated that, on the one hand, the Polish legislator tries to take into account that a lease is an effective instrument of structural changes in agriculture, which has been used for many years (even centuries) not only in Europe but also all over the world. It is reflected in changes in regulations after the political transformation and it mainly refers to managing state properties. After the Polish accession to the European Union, lessees can use, usually under the same rules as owners, the European funds. The regulations on the Common Agricultural Policy, in principle, does not subject granting the EU funds to the form of holding land. As a result, in the countries of the “old” European Union, such as France, the Netherlands, Great Britain or Germany, a lease is a very popular title to enlarge agricultural farms.

On the other hand, the problems the agricultural producers have result from the regulations on the form of a lease agreement. Some obstacles to the development of farms result from short time leases, lack of automatic lease extension, oral agreements or written ones but without a certified date. Moreover, it goes without saying that the regulations make it easier for family farms to develop. Only the lessees of such farms have the right of pre-emption. There are, however, important legal barriers that have to be faced by large farms.

These times, a lessee of agricultural land is an entity who, in order to run an effective agricultural activity, has to make different types of contract, file applications, invest. The development of lease is part of new theories of economics. The carried out research has confirmed that a lease is more and more influenced by more and more diverse range of legal acts. Lease is a civil law institution but the changes in agriculture made it evolve in a significant way. Freedom of making contracts with reference to state lease and lease from local government units was to some extent limited. That situation can be exemplified by a bidding mode of making contracts, duration of a lease contract or its extension, the rules for reducing the rent, etc. Moreover, the performance of lease is influenced by bigger and bigger number of administrative acts referring mainly to the principles for protecting agricultural land, protecting water and other elements of the environment. The lessee has to take care, to greatest extent, of public property, namely he has to meet the requirements regarding the environmental protection, which results from the EU regulations and principles. That trend starts to impact also civil law regulations relating to the forms of holding the land, for instance so-called ecological lease introduced to the French system. The ecological lease is part of sustainable development of agriculture and rural areas as well as of new economical theories – e.g. public goods theory. As for lease,

the theory of neoinstitutionalism presenting individuals, e.g. lessees, as entrepreneurs for whom own interests are the most important is less and less popular. More and more significance, however, has been given to new institutional economics, painting the lessee as an entity combining individual interests with public interests regarding the protection of public (environmental) goods.

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DZIERŻAWA GRUNTÓW ROLNYCH JAKO INSTRUMENT ZMIAN STRUKTURALNYCH W ROLNICTWIE W KONTEKŚCIE TEORII EKONOMII INSTYTUCJONALNEJ

Streszczenie. W ramach artykułu przeprowadzono analizę regulacji prawnych dotyczących dzierżawy i danych statystycznych oraz dokonano oceny ich wpływu na zmiany strukturalne w rolnictwie. W dalszej kolejności rozważania koncentrowały się na przedstawieniu zagadnienia dzierżawy w aspekcie teorii ekonomii instytucjonalnej (definicja instytucji w ramach starej i nowej ekonomii instytucjonalnej). Badania wykazały, że dzierżawa jest efektywnym instrumentem zmian strukturalnych na polskiej wsi, przyczyniając się nie tylko do powiększania i tworzenia nowych gospodarstw, ale także modernizacji istniejących. W obecnych czasach dzierżawca gruntów rolnych to podmiot, który aby prowadzić efektywną działalność rolniczą musi zawierać różnego rodzaju umowy, składać wnioski, inwestować. Poza tym w coraz większym zakresie musi dbać o dobra publiczne, czyli zachowanie wymogów w zakresie ochrony środowiska. Rozwój dzierżawy wpisuje się w nowe teorie ekonomii oraz w zrównoważony rozwój rolnictwa i obszarów wiejskich.

Słowa kluczowe: dzierżawa, grunty rolne, struktura agrarna, nowe teorie ekonomii instytucjonalnej, wspólna polityka rolna

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