

Lex lata and lex ferenda remarks regarding the character of farmers' social insurance based on Articles 5a and 5b of the Act on Farmers' Social Insurance

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Abstract

In the study, a polemic was undertaken regarding the assessment of the nature of farmers' social insurance pursuant to Article 5a and Article 5b of the Act on Farmers' Social Insurance of 20 December 1990 (Journal of Laws 2021, item 266, as amended). As a result of an established practice, as to the compulsory nature of social insurance for farmers pursuant to Article 5a of this Act, there may be discrepancies in the interpretation of solutions contained in the Act on Farmers' Social Insurance but it may also have a significant impact on other rights, including the granting (or reimbursement) of financial assistance for the commencement of non-agricultural activities in rural areas, from which farmers may be excluded. It should be added that, for this reason, this issue is very important not only in the context of farmers' social insurance. Interestingly, this subject matter is not generally addressed in the literature, so there is no standpoint in this regard.

Keywords: KRUS, farmers' social insurance, act on farmers' social insurance.

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Introduction

In accordance with the provisions of the Act on Farmers' Social Insurance of 20 December 1990¹, individuals are subject to this insurance based on the Act or upon request. The nature of the above-mentioned insurance, i.e. by virtue of the Act or upon request, becomes important, for example, in the context of the solutions set out in the Regulation of the Minister of Agriculture and Rural Development of 25 July 2016 on the detailed conditions and procedure for granting, paying and reimbursing financial assistance for operations such as "Premiums for the start of non-agricultural activities" under the following sub-measure "Aid for the start of non-agricultural economic activities in rural areas" covered by the Rural Development Programme for 2014–2020. Beneficiaries of this measure must, in a certain way, be excluded from the farmers' social insurance and covered by the social insurance under the general scheme in order to meet the conditions associated with the aid granted for the start-up of non-agricultural activities. The problem arose in practice when the local units of the Agricultural Social Insurance Fund refused the beneficiaries of this measure the possibility of excluding farmers from social insurance after submitting applications in this regard. In the above context, there was a question related to both the nature of the insurance, i.e. whether it is insurance upon request or by virtue of the law, as well as the possibility of resigning from this insurance. The decision in this respect also applies to a number of other solutions specified in the Act on Farmers' Social Insurance in relation to individual matters related to being subject to farmers' social insurance and acquiring the right to the benefits resulting from this insurance. Therefore, this is an important issue in the context of interpreting the provisions on farmers' social insurance.

Problem analysis

Pursuant to Article 3 of the above-mentioned Act on Farmers' Social Insurance, as already mentioned, individuals are subject to the insurance by virtue of the Act or upon request. Insurance by virtue of the act constitutes compulsory insurance. The insurance obligation arises when the conditions specified for a given insurance are met and ceases when they cease to exist. Being subject to a certain type of social insurance results from mandatory provisions. These provisions create a specific

1. Dz. U. 2021 poz. 266 ze zm.

insurance relation by virtue of the law itself according to the legal status of the date of the obligation to insure occurring². Therefore, since the elements of the compulsory insurance relation by virtue of the Act are shaped by the Act in an absolutely binding manner, they thus exclude the influence of the will of the parties on its content and, consequently, exclude the possibility of termination of this insurance as a result of submitting a specific declaration of will, if not provided for in the provisions of the Act.

On the other hand, insurance upon request is voluntary insurance and to be covered by this insurance, it is required to express the will of the party, i.e. to submit an application for coverage of this insurance, provided that the conditions specified in the Act are met. Insurance coverage upon request shall take place from the date indicated in the application for insurance, but not earlier than the date on which the application was submitted³. Pursuant to Article 3 section 3 of the Act on Farmers' Social Insurance, an individual subject to insurance upon request may withdraw from insurance at any time by submitting a declaration of will in this matter. Thus, only if farmers are subject to social insurance upon request, it is possible to withdraw from this insurance at any time by submitting an appropriate statement. Insurance coverage upon request is also dependent on the will of the person who wants to be covered by such insurance, provided that this person meets the other conditions specified in the provisions of the Act.

In view of the above, it remains to be decided what character should be attributed to farmers' social insurance on the basis of Article 5a of the Act on Farmers' Social Insurance and whether we are dealing with differences in relation to the social insurance of farmers in this respect, in accordance with Article 5b of the Act on Farmers' Social Insurance, which also applies to the issue related to the convergence of insurance from the agricultural system and the general system.

As mentioned above, the pension authority responsible for handling this insurance presents a uniform position, according to which the insured persons, pursuant to Article 5a of the Act on Farmers' Social Insurance are subject to this insurance by virtue of the Act and may not, as a result of submitting an application, be excluded from this insurance as long as they meet the statutory conditions for being subject to this insurance. This type of standpoint seems to be confirmed also in the literature – it is derived from Article 5a of the Act on Farmers' Social Insurance. Namely, a farmer or a householder who, being subject to full insurance by virtue of the Act, continuously for at least three years, starts conducting non-agricultural business

2. Cf. Wyrok Sądu Najwyższego z 11 lutego 1999 roku, II UKN 461/98.

3. Art. 3 ust. 2a ustawy o ubezpieczeniu społecznym rolników.

activity or starts cooperation in conducting this activity, continues to be subject to this insurance during the period of conducting non-agricultural business activity or cooperation in conducting this activity, if he meets the conditions specified in this provision. The author of the standpoint in the scope of being subject to farmers' social insurance under the Act on the basis of Article 5a of the above-mentioned Act notes the wording contained in this provision, namely the phrase "continues to be subject to this insurance"⁴. In connection with this part of the provision, the author points to the being obligatorily (by virtue of the Act) subject to agricultural social insurance of a group of farmers-entrepreneurs. Simultaneously, the same author sees a different nature of the farmers' social insurance in relation to the persons covered by this insurance pursuant to Article 5b of the Act on Farmers' Social Insurance. However, the author does not conduct a detailed analysis in this respect, apart from the statement that in this case we are dealing with double social insurance, compulsory in ZUS (Social Insurance Institution) as a contractor (or – respectively – a member of the supervisory board) and voluntary in KRUS (Agricultural Social Insurance Fund) as a farmer⁵. It is important to note that pursuant to Article 5b section 1 of the above-mentioned Act on Farmers' Social Insurance, a farmer or a household-er who, being subject to insurance to the full extent under the Act, was covered by another social insurance for the performance of the contract referred to in Article 6 section 1 point 4 of the Act of 13 October 1998 on the social security system, or appointment to the supervisory board, is still subject to this insurance during the period of performance of the contract referred to in Article 6 section 1 point 4 of the Act of 13 October 1998 on the social security system, or performing a function on the supervisory board despite being covered by another social insurance in this respect, if the income generated in this respect in the monthly settlement does not exceed the amount equal to the minimum remuneration for work, determined on the basis of separate provisions. It is difficult to find out where such a standpoint comes from regarding the voluntary nature of insurance pursuant to Article 5b of the Act on Farmers' Social Insurance, because this provision also uses the wording on further subject to agricultural insurance during the period of performance of the contract referred to in Article 6 section 1 point 4 of the Act of 13 October 1998 on the social security system, or performing a function in the supervisory board. It does not clearly result from section 2 of Article 5b of the Act on Farmers' Social Insurance, where the insured person was guaranteed the possibility of withdrawing

4. D. Puślecki, *Ubezpieczenie rolników wykonujących umowy cywilno-prawne i prowadzących działalność gospodarczą w Kasie Rolniczego Ubezpieczenia Społecznego*, Stowarzyszenie Ekonomistów Rolnictwa i Agrobiznesu, Roczniki Naukowe, t. XVII, z. 2, p. 204.

5. *Ibidem*, p. 204.

from agricultural insurance at any time after submitting a declaration of withdrawal from this insurance to the Fund, but not earlier than from the date on which this declaration was submitted to the Fund. Assuming that this insurance is voluntary upon request, the creation of a separate authorisation to withdraw from that insurance would be groundless, as other provisions referred to above allow for it. I am of the opinion that, taking into account the above-mentioned section 2 of Article 5b of this Act on Farmers' Social Insurance, it is possible to make requests contrary to the position of a voluntary nature of being subject to insurance on the basis of this provision. If the presented arguments were not accepted, it would be puzzling why the rational legislator provided for the possibility of withdrawing from the insurance on the basis of section 2 of Article 5b of the Act on Farmers' Social Insurance, since the insured may, upon request, resign from this insurance at any time pursuant to Article 3 section 3 of this Act on Farmers' Social Insurance.

At the same time, it should be noted that this type of solution on the possibility of withdrawing from farmers' social insurance is missing in Article 5a of the above-mentioned Act on Farmers' Social Insurance. Therefore, assuming only its voluntary nature, it would be possible to withdraw from this insurance pursuant to Article 3 section 3 of the above-mentioned Act on Farmers' Social Insurance. It should be kept in mind that being subject to the farmers' social insurance in the case of conducting both agricultural and non-agricultural activities is an exceptional situation where persons conducting non-agricultural economic activities may be subject to farmers' social insurance, despite the fact that it is appropriate for them to be insured under the general system. Due to the fact that the principle is to exclude persons from the obligation of agricultural social insurance, who meet the conditions to be covered by another social insurance⁶, Article 5a of this Act should be interpreted strictly and applied only if all the conditions specified therein are met. This provision allows a farmer or a householder to be subject to the farmers' social insurance if they state such a will in an appropriate declaration. Therefore, the provision does not contain the statutory obligation to be subject to the farmers' social insurance by a farmer or a householder who undertakes non-agricultural business activity, but leaves a choice of the insurance system⁷. Thus, Article 5a of the Act on Farmers' Social Insurance does not establish the principle of primacy, otherwise the obligation to be subject to agricultural social insurance in the event of the concurrence of this insurance

6. Art. 7 ust. 1 i art. 16 ust. 3 ustawy o ubezpieczeniu społecznym rolników.

7. Cf. Wyrok Sądu Najwyższego z 18 października 2005 roku, sygn. akt II UK 41/05, OSNP rok 2006, nr/15-16, poz. 250.

with social insurance in the general system for conducting non-agricultural business activity⁸.

Therefore, it can be assumed that the insurance pursuant to Article 5a of the above-mentioned Act on Farmers' Social Insurance constitutes insurance upon request, arising on the basis of a declaration of intent submitted to the pensions authority about the willingness to continue to be covered by farmers' social insurance (Article 5a section 1 point 1 of the Act on Farmers' Social Insurance). Failure by the legislator to expressly state that it is insurance upon request, cannot be interpreted to the detriment of insured persons (functional and systemic reasons do not support this) who are obliged by other provisions to take steps to terminate this insurance and to cover them with insurance appropriate for persons conducting non-agricultural business activity.

Generally, as already mentioned above, the obligation of social security resulting from the universal social security system, and regulated in the provisions on the social security system, excludes the obligation of insurance regulated in the Act of 20 December 1990 on Farmers' Social Insurance. As specified in Article 7 section 1 and Article 16 section 3 of the Act on Farmers' Social Insurance. These provisions regulate the primacy of the general social security system over farmers' social security. An exception to this rule has been regulated in Article 5a of the Act on Farmers' Social Insurance. Under that provision, a farmer who commences a business activity under the conditions laid down therein, may choose the title of agricultural insurance, but this requires the insured person to submit a declaration of will expressing hi/hers intention to remain covered by that insurance.

Thus, the insured person should be entitled, pursuant to Article 5a of the above-mentioned Act on Farmers' Social Insurance, to the possibility of withdrawing from this insurance at any time, after submitting a statement on this matter pursuant to Article 3 section 3 of the Act.

In addition, it should be noted that a fundamental change in the content and the same nature of insurance, pursuant to Article 5a of the Act on Farmers' Social Insurance, took place starting on 2 May 2004. It should be kept in mind that Article 5a of the Act on Farmers' Social Insurance did not provide for the obligation to choose the type of insurance by submitting appropriate declarations of will, as it is in the legal status existing since 2 May 2004. The provision of Article 5a of the Act on Farmers' Social Insurance in the wording in force until 2 May 2004, provided that a farmer or a householder who, being subject to agricultural insurance to the full extent

8. Cf. Wyrok Sądu Najwyższego z 30 czerwca 2000 roku, sygn. akt II UKN 618/99, OSNP rok 2002, nr 1, poz. 27.

continuously for at least one year under the Act, undertakes non-agricultural business activity without being an employee and without remaining in a service relation, is still subject to this insurance. A farmer or householder may be subject to other social insurance if he/she submits a statement to the Social Insurance Institution or the Agricultural Social Insurance Fund that he/she wants to be subject to other social insurance for non-agricultural business activity, provided that he/she meets the conditions specified in separate regulations in this regard.

Therefore, the insured person as a farmer running a farm and subject, in connection with the above, by virtue of the Act, to farmers' social insurance for a period longer than one year before the commencement of business activity was entitled to continue to be subject to the farmers' social insurance and which should be emphasized by virtue of the Act, in accordance with Article 5a of the discussed Act, because taking up non-agricultural activities did not in any way change the compulsory nature of this insurance. Alternatively, the farmer could be covered by insurance in the general system, upon request, if he/she expressed such will by submitting an appropriate statement to the Agricultural Social Insurance Fund or the Social Insurance Institution. In the legal situation at that time, the farmer was therefore not obliged, on the date of commencement of business activity, to report this fact to the Agricultural Social Insurance Fund and to submit a declaration of will on the willingness to continue farmers' social insurance. On the contrary, he/she made such a statement only if he/she wanted to be insured under the general system for non-agricultural business activity. A change in the legal status in the matter of subjecting farmers to social insurance occurred on 2 May 2004 after the amendment of Article 5a of the Act, by Article 1 point 3 of the Act of 2 April 2004 amending the Act on Farmers' Social Insurance and amending certain other acts⁹. The revised Article 5a of the Act on Farmers' Social Insurance, made it possible to choose agricultural insurance, in the event of coincidence with the obligation of social insurance for conducting non-agricultural business activity, subject to the fulfilment of a number of conditions. This provision excluded the possibility of farmers who carried out non-agricultural economic activities taxed on general principles to remain covered by agricultural social insurance. On the other hand, farmers who conducted non-agricultural business activity taxed with a flat-rate tax not higher than PLN 2,528, intending to continue to be subject to agricultural social insurance, should – pursuant to the transitional provision of Article 5 of the amending act – demonstrate compliance with the new conditions. Namely, by 30 September 2004, they should present to the Fund a certificate from the appropriate tax office on the taxation of

9. Dz. U. nr 91 poz. 873.

their business in 2003 with a flat-rate tax. Failure to provide this document resulted in exclusion from agricultural insurance at the end of the third quarter of 2004 in accordance with Article 5 section 3 of the aforementioned Amending Act (of 2 April 2004). The provision of Article 5 of the Amending Act of 2 April 2004 were subjected to an assessment by the Constitutional Tribunal. The Tribunal questioned the constitutionality of the provision contained in Article 5 section 2 of the Amending Act of 2 April 2004 regarding exclusion from agricultural insurance due to the form of taxation¹⁰. As a result of this ruling, the form of taxation of the farmer's business activity is currently irrelevant for the purposes of continuing to be subject to agricultural insurance. The possibility of continuing agricultural insurance is generally determined in the current legal status by the amount of income tax due on non-agricultural activities, which was specified in the Act and is annually valorised, while its exceeding results in excluding farmers from social insurance while at the same time continuing to conduct non-agricultural business activities in addition to agricultural activities. In addition, a farmer or householder on the basis of the currently applicable Article 5a section 1 point 1 of the above-mentioned Act on Farmers' Social Insurance is obliged to submit a statement on the willingness to continue this insurance within 14 days from the date of commencement of non-agricultural business activity or cooperation in this activity. It should be added that the obligation to submit a declaration of willingness to continue agricultural insurance arose on 2 May 2004. It can be concluded that a farmer or householder, based on the currently applicable provision (Article 5a of the Act on Farmers' Social Insurance) is not subject to farmers' social insurance obligatorily by virtue of the Act, and it constitutes voluntary insurance that covers such a farmer or householder, if he/she submits an appropriate statement on the willingness to continue the farmers' social insurance and meets the other conditions resulting from this provision, despite the fact that it is appropriate for him/her to be insured under the Act in the general system for non-agricultural business activities. Alternatively, it may be considered whether the change in the nature of farmers' social insurance in connection with the amendment of the regulations of 2 May 2004 did not occur "by accident", since the pension authority maintains the opposite position. Nevertheless, in the current legal situation, it seems justified to interpret this issue in such a way that farmers and householders insured under Article 5a of the Act on Farmers' Social Insurance may resign from this insurance if they submit an application in this respect, because it constitutes insurance upon request.

10. Wyrok TK z 13 marca 2006 roku, P 8/05, OTK 2006-A nr 3, poz. 28, Dz. U. nr 46 poz. 335 z 21 marca 2006 roku.

On the other hand, in Article 5b of the above-mentioned Act on Farmers' Social Insurance, its compulsory nature can be seen due to its similarity to Article 5a of the same Act, before the above-mentioned amendment of 2 May 2004. This is also supported by the fact that the legislator decided to create the possibility of resigning from insurance on the basis of Article 5b, as a result of submitting a declaration of withdrawal from this insurance to the Agricultural Social Insurance Fund. If it were a voluntary insurance, creating the possibility of resigning from insurance under this provision would be unnecessary, because this possibility is ensured by Article 3 section 3 of the Act on Farmers' Social Insurance in force.

Conclusions

Taking into account the above arguments, it seems justified to change the interpretation with regard to the compulsory nature of insurance pursuant to Article 5a of the above-mentioned Act on Farmers' Social Insurance. It is also worth considering a change in relation to the interpretation of the voluntary nature of insurance pursuant to Article 5b of the said Act. This is not only important with regard to the provisions on farmers' social insurance, but it is also important, as pointed out at the beginning of the study, in the context of the smooth functioning of aid measures for EU-funded farmers. The provisions of the law make the payment of funds subject to certain conditions, and this requires a proper interpretation of the solutions adopted in the Act on Farmers' Social Insurance. In addition, it is worth bearing in mind that a process aimed at determining the content of a legal norm contained in a legal provision does not cease until the doubts that arise during the interpretation of the provisions are removed. This article can be treated as an opinion in the discussion that will be initiated thanks to it, or as an introduction to more profound analyses that will allow to resolve the doubts that have arisen. Due to the limited volume of the article, all doubts, which arose after reading the standpoint contained in it, could not be resolved, and therefore, maybe the court judicature will be decisive in this respect, if someone decides to challenge the standpoint of the Fund's field units.

Bibliography

Puślecki D., *Ubezpieczenie rolników wykonujących umowy cywilno-prawne i prowadzących działalność gospodarczą w Kasie Rolniczego Ubezpieczenia Społecznego*, Stowarzyszenie Ekonomistów Rolnictwa i Agrobiznesu, Roczniki Naukowe, t. XVII, z. 2.

Wyrok Sądu Najwyższego z 11 lutego 1999 roku, II UKN 461/98.

Wyrok Sądu Najwyższego z 18 października 2005 roku, sygn. akt II UK 41/05, OSNP rok 2006, nr/15–16, poz. 250.

Wyrok Sądu Najwyższego z 30 czerwca 2000 roku, sygn. akt II UKN 618/99, OSNP rok 2002, nr 1, poz. 27.

Wyrok Trybunału Konstytucyjnego z 13 marca 2006 roku, P 8/05, OTK 2006-A nr 3, poz. 28, Dz. U. nr 46, poz. 335 z 21 marca 2006 roku.

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