

The fall of non-insurance functions of the retirement part of agricultural social insurance

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Abstract

The article attempts to analyse the evolution of the significance of social insurance for farmers in the context of the impact regarding changes in the agrarian and generational structure in Polish agriculture. This is particularly important in reference to the recent amendment to provisions relating to farmers' social insurance, referring to waiving the obligation to cease agricultural activity after acquiring the right to an agricultural pension in order to pay out this benefit in full. It can be concluded that the objectives of agricultural policy pursued so far by means of the above-mentioned regulations, have been abandoned. Therefore, a question arises as to whether these objectives have been achieved or whether there has been a change in relation to the existing agricultural policy and, as a consequence, the amendment in question has taken place. Even though it is possible to come across the view that in Poland, the biggest challenges of the agricultural policy should include stimulating the processes of concentration, and therefore improving the area structure of agricultural holdings and rationalising employment in agriculture, rather than supporting the process of generational change¹. Bearing in mind that the provisions on farmers' social insurance generally supported the process of generational change², perhaps it would be justified to search for new solutions aiming at achieving the objectives of agricultural policy – such that should now be put before farmers' social insurance.

Keywords: restructuring function, farmers' social security, generation exchange.

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1. A. Czyżewski, A. Matuszczak, *Uzasadnienie funkcjonowania odrębnych systemów emerytalnych dla rolników w Polsce i innych krajach UE*, Expertise performed at the commission of the Ministry of Agriculture and Rural Development in Warsaw in accordance with the Act of July 10, 2014, p.12. A similar position is presented in: B. Kłos, *Ubezpieczenia społeczne rolników a rozwój obszarów wiejskich*, "Studia BAS" 2010, nr 4(24), p. 154.
 2. J. Król, *Funkcja restrukturyzacyjna ubezpieczenia społecznego rolników*, „Rozprawy Ubezpieczeniowe. Konsument na rynku usług finansowych” 2018, nr 27(1).

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Introduction

Since the moment of establishing legal regulations in Poland referring to the social security of farmers, the regulations regarding transferring farms in exchange for agricultural retirement and pension benefits have changed several times. Until 1962, there was no social security system for farmers. Care provided to older farmers at that time was considered as an obligation of the following generation, so usually farms were transferred on a lifetime basis. The first solution in the area of farmers' social security was created in the course of Act of 28 June 1962, on taking over certain agricultural properties for development or state ownership and on the retirement provision of the owners of these properties and their families³. This Act introduced the possibility of obtaining retirement benefits by farmers in exchange for taking over agricultural property for development or state ownership (by means of an administrative decision). Therefore, an attempt to link social and economic objectives can be observed from the very outset. Further legal acts are the Act of 24 January 1968 on pensions and other benefits for farmers transferring agricultural property to the state⁴ as well as the Act of 29 May 1974 on transferring agricultural holdings for state ownership for a pension and cash payments⁵. The second period in the history of farmers' social insurance covers 1977–1989. On the basis of the Act of 27 October 1977 on pension provision and other benefits for farmers and their families, a contribution⁶ was introduced, paying which also had an impact on receiving a pension. A following important element consisted in introducing the possibility of receiving retirement and pension benefits in exchange for transferring an agricultural holding to the successor, although transferring it to the state resulted in an increase in the received pension benefit. An agricultural holding was specified in the Act not using the criterion of area but the value of the holding's sales. A farmers' pension fund was also created in terms of the Act, supported by farmers' contributions and a subsidy from the state budget. The introduction to the aforementioned Act from 1977 includes a provision regarding the justification of the introduced social security solutions, which reads as follows:

3. Dz. U. 1962 nr 38 poz. 166.

4. Dz. U. 1968 nr 3 poz. 15.

5. Dz. U. 1974 nr 21 poz. 118.

6. Dz. U. 1977 nr 32 poz. 140.

“(…) recognising that introducing the retirement pension system and other benefits for farmers and their families:

- will ensure provisions for old age and invalidity to those farmers who, by increasing agricultural production and selling agricultural products to units of the socialised economy (...);
- will create conditions for further development of socialised agriculture and for a beneficial reconstruction of the structure of individual farms, as well as modernisation of farming methods”.

The social objective consisting in providing farmers and members of agricultural families with adequate benefits at the time of deterioration in health and during old age was indicated in the first place. The nature of the activity carried out by a given farmer, who must actually carry out agricultural production, is also important – so there is also a hidden economic objective. The second aspect indicated in the introduction to the Act is the structural objective. Only one person may become the successor (the exception is marriage: Article 43 section 1 of the Act; and a situation in which transferring a farm to several successors will improve the agrarian structure and impact increasing commodity production in terms of farms run by these persons: Article 43 section 2 of the Act).

The following stage in developing the system consisted in the Act of 1982 on social insurance for individual farmers and members of their families⁷, according to which a farmer, that person's spouse and household member were entitled to a separate pension. The pension was granted to a farmer who met the following conditions collectively: (1) reached the retirement age – 65 years for men and 60 years for women; (2) handled a farm or worked there for at least 25 years – a man, or 20 years – a woman, and during that period paid contributions for insurance of farmers; (3) transferred the farm (Article 15 of the Act of 1982). The latter condition, of course, did not apply to the household member.

Every insured person was entitled to a basic pension equal to the lowest occupational pension. The farmer and the farmer's spouse were entitled to an increase in the pension due to achieving an average annual value of sales of agricultural products to socialized economy units, concerning the last 10 calendar years before the date of transferring the agricultural holding. The value of sales of agricultural products was subject to revaluation corresponding to changes in purchase prices over the 10 years before transferring the holding, applying the revaluation coefficient announced annually by an order of the Minister of Labour, Wages, and Social Affairs (Article 19 of the Act of 1982). Depending on the value of the land, orchards,

7. Dz. U. 1982 nr 40 poz. 268.

fruit shrubs and other plantations, forests, and buildings transferred to the state, the farmer who transferred a holding to the state free of charge received an increase in the pension by 0.3% of the total value of the listed components. In the event that spouses were also entitled to the benefit, the increase was divided among them in equal parts (Article 22 of the Act of 1982). In the final stage of the functioning of the provisions of this Act, granting the above increase was abandoned, only family, nursing, and state decoration allowances were kept.

The pension scheme, which operated on the basis of this Act, as well as previous regulations, intended to serve a number of functions, namely social, productive, and structural. According to the previous considerations, the social goal was most fully carried out by the Act of 1982. For the first time there were political and production goals in the background. That is because, each of the spouses was granted a separate pension, the amount of which was equal to the level of the lowest occupational pension, and furthermore, appropriate increases were also provided for. Pensions for household members for working on a farm were also introduced. This benefit was subject to annual indexation according to the principles adopted in the occupational pension system, which prevented their devaluation. Implementing other objectives turned out to be difficult. Actually, social process solutions usually maximise one goal, and such a goal, in relation to farmers' pensions, from the outset was to build social security for people unable to continue working in agriculture due to their age. Fulfilling additional objectives by means of a pension scheme should be considered as a further effect, which should not be subject to excessive criticism, as a pension scheme may constitute a factor supporting the state's policy towards agriculture, not being its main instrument.

Thus, over the years, the farmers' social security scheme has gradually evolved with the change in agricultural policy objectives, even though the dominant element consisted in treating benefits as equivalent to an agricultural holding, which a farmer disposes free of charge in exchange for a pension in favour of a successor, namely a natural person or the state. As a consequence, an economic objective was noticeable in the introduced regulations. However, it should not be forgotten that the social objective was also being pursued in principle by providing a social security for farmers after they were no longer active in terms of labour⁸.

8. E. Nasternak, *Prawo do emerytury rolniczej*, doctoral dissertation, 2017, p. 69

Problem analysis

The third stage of creating a system of social insurance for farmers was initiated on the basis of the currently applicable Act of 20 December 1990 on social insurance for farmers⁹ (hereinafter referred to as the u.s.r.). Since the beginning of these regulations, one of the conditions for receiving a pension in full consisted in ceasing agricultural activity. Additionally, in order to acquire the right to a pension, a farmer or a household member had to prove reaching the retirement age and possessing the required insurance period, currently exclusively agricultural. It should be noted that Article 28 of the u.s.r. includes – unknown in other solutions functioning in our country in the field of social security – a mechanism of partially suspending the payment of agricultural retirement and pension benefits (this suspension applies to the part supplementing the agricultural retirement or agricultural pension). In addition to the supplementary part, agricultural pension benefits consist of a contribution part, which is a derivative of the paid pension contributions. The instance suspending the payment of the supplementary part, which constitutes an essential part of the pension benefit, generally took place in cases of continuing agricultural activity by the recipient¹⁰. Essentially, this solution intended to compensate the inability to carry out agricultural activities after acquiring the right to agricultural retirement benefits. Whereas, people who did not decide to cease agricultural activity and gained additional income from it after acquiring these benefits, received only a benefit in an amount derived from the payment of contributions (the contribution part of the agricultural pension). Due to the fact that the contributions to the agricultural pension insurance are low, the amount of the contribution part is also limited. Since the discussed law entered into force, the legal standard determined in it did not undergo a serious change – until now, when on the basis of the Act of 28 April 2022 on amending the act on social insurance of farmers (Journal of Laws 2022, item 1155), there has been a change according to which persons entitled to an agricultural pension don't have to stop agricultural activity in order to obtain the benefit in full. In reference to agricultural pensioners, the already existing arrangements have not changed. This change is a derivative of the expectations of beneficiaries who demanded that they be allowed to carry out agricultural activities after acquiring the right to an agricultural pension. This is evidenced by the content of the justification of the draft law in question, according

9. Dz. U. 2022 poz. 933.

10. An amendment to the Agricultural Act entered into force on 15 June 2022 – Act of 28 April 2022 amending the Act on social insurance for farmers (Dz. U. 2022 poz. 1155), according to which the supplementary part of the agricultural pension is not suspended in the case of carrying out agricultural activity by an agricultural pensioner.

to which this change constitutes a consequence of numerous demands of farmers as well as agricultural organisations. The above probably also results due to the difficult economic situation and low agricultural pensions (as a rule, only slightly higher than the lowest pension). However, by introducing the above change, the legislator has deprived itself of the possibility to impact the processes taking place in Polish agriculture, consisting in the so far desirable generational exchange. A historical review of farmers' social security laws shows the evolution of used instruments, including farmers' social insurance, to achieve social and agricultural policy objectives. Nevertheless, a change regarding abandoning the previous objectives may be surprising as to its legitimacy, as agricultural retirement benefits are financed in more than 90% from the state budget.

At this point, it is worth mentioning that agricultural pensions consist of two elements, namely the contributory part and the supplementary part. The contributory part of the agricultural pension is not very high (1% of the basic pension for each year of being covered by the pension insurance) and is of minor significance when it comes to the size of the benefit. However, this part of the agricultural pension benefit was based on the principle of reciprocity of contribution periods and the size of the benefit. The main part of the benefit consists in the supplementary part, which, in accordance with the provisions on social insurance for farmers, is an amount making up from 85% to 95% of the basic pension, depending on the applicable agricultural insurance years for calculating the contribution part.

Taking this into consideration, it can be concluded that the structure of agricultural pension benefits differs significantly from constructing such benefits in the universal social security system. The basic difference comes down to reducing the element of reciprocity in the structure of agricultural benefits to the paid social insurance contributions of farmers during their professional activity, to a small extent. Such a form of agricultural pension benefits is justified in terms of the initial stage of the construction of a separate social insurance system for farmers and the assumed lower level of profitability from agricultural activities. Today, this is of particular significance in relation to the vast majority of farms in our country, which area is not large enough to make a satisfactory income. Therefore, it is justified for the state budget to participate in the financing of the social insurance of farmers to a greater extent. Nevertheless, it remains to be considered whether the described change is sufficient and should not be accompanied by a deeper reform of the social insurance of farmers that would justify such a high level of co-financing without the possibility of impacting the desired directions of development of Polish agriculture. That is because, the sole resignation from implementing non-insurance objectives may lead to questioning the validity of the further functioning of a separate social insurance system for farmers, as a separate pension body is not required for collecting

contributions and paying agricultural benefits. It should be noted that this statement is not a prerequisite for abolishing the separate social security system, but should be understood as an expression of concern for maintaining a significant instrument that may affect the implementation of agricultural policy in our country.

So far, both in the doctrine and jurisprudence, it has been widely accepted that granting a much greater rank to the supplementary part of the agricultural pension was aimed at achieving the objectives in the field of agricultural policy, consisting in stimulating generational changes in agriculture and transforming its structure. This was done by suspending the supplementary part of the agricultural pension benefit in whole or in part specified in the regulations, if the farmer did not cease agricultural activity, despite the decrease in strength, within the meaning of the provisions on the social insurance of farmers¹¹.

Therefore, it can be stated that suspending the supplementary part of the agricultural pension benefit is a fixed part of the logic of the farmers' social security system, where the contribution part corresponding to the paid contributions is always paid out and the payment of the supplementary part financed by the state budget depends on achieving certain agricultural policy objectives.

Nevertheless, it should be noted that the draft act amending the Act on social insurance for farmers¹², addressed to the Sejm of the Republic of Poland, did not completely abandon implementing non-insurance objectives via regulations on social insurance for farmers. The government project¹³ proposes to change Article 16 section 3, according to which being subject to pension insurance should be granted due to carrying out agricultural activity by persons entitled to an agricultural pension, in addition to provisions of the act and paying contributions. According to the justification for this amendment, this was a consequence of a change in Article 28, according to which suspending payments of the supplementary part of the agricultural pension will no longer be carried out if the pensioner does not cease agricultural activity. This way, in accordance with the intention of the project promoters included in the justification for the project, the payment of pension insurance contributions on the one hand was intended to constitute a factor that moderately impacted generational exchange, and on the other hand, pensioners who simultaneously achieved pension and agricultural activity income were to have a greater share in financing the insurance system, which is only to a small extent financed from the contributions of the insured.

11. Wyrok Trybunału Konstytucyjnego z 30 maja 2000 roku, sygn. K.37/98.

12. Draft Act amending the Act on social insurance of farmers – nr UD273 list of legislative and programme works of the Council of Ministers.

13. Druk sejmowy nr 2185.

Therefore, by resigning from the obligation to cease agricultural activity in order to pay an agricultural pension in full, the project promoter intended to introduce another solution in the form of an obligation to pay a pension contribution, which would fit (as indicated above) into the logic on which the separate social insurance system for farmers is built.

However, this solution was abandoned during parliamentary work. This means that the legislator decided that the pension part of the social insurance of farmers will perform only a social function consisting in guaranteeing material security without regard to the role played so far by the instrument of state policy in favour of agriculture and rural areas in the field of generational change in rural areas. It should be noted that the previous solutions in the discussed scope played additional functions, as the obligation to cease agricultural activity was usually associated with transferring the agricultural holding to the successor or selling it to expand a different holding. Thus, the generational change on a farm took place during the farmer's life. This ensured continuity and prevented excessive division of the farm among the heirs and thus conflicts in the situation of dividing the inheritance.

Conclusion

One should consider whether this change is justified due to the assumptions on which a separate social insurance scheme for farmers is based. Taking into account the above considerations, perhaps it would be necessary to proceed with further modifications of the farmers' social insurance system, as resigning from the current method of impacting the insured does not mean that the objectives assumed before these solutions have been met. It is nothing new to state that Polish agriculture still suffers from excessive fragmentation, accompanied by overloading of the workforce and lower profitability compared to European agriculture. It should also be agreed that taking radical actions to improve the area structure in Polish agriculture may bring numerous undesirable phenomena such as unemployment and a crisis in rural areas. Additionally, a number of adverse social phenomena may be associated with excessive concentration in agriculture, such as problems in ensuring access to public services for a reduced number of residents of rural areas. Therefore, the state's agricultural policy should be balanced, so that the course of demographic processes regarding the rural population does not get out of control. Taking into consideration the possibility of an occurrence of the indicated problems, it should also be ensured that the state's agricultural policy does not boil down to a passive attitude and thus to acting as a "night watchman". Therefore, it seems that reasonable actions of the

legislator should not come down to simply abandoning the possibility of achieving goals that may gradually contribute to achieving the desired effects.

Nevertheless, taking into consideration the fact that the amendment in question has already been implemented, it seems valid to consider whether it is not justified to introduce a more effective system of incentives to achieve the desired objectives, such as a supplement to the agricultural pension for transferring a holding to another holding in order to improve the area structure of the latter. This article may become an element initiating a discussion on the direction of changes concerning farmers' social insurance. In order to maintain the autonomy of this system and for it to be able to carry out non-insurance objectives, the level of financing of pension benefits from the state budget should remain at the same significant level as currently.

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