

Concept of Agricultural Ownership¹

Katarzyna Czerwińska-Koral*

DOI: <https://doi.org/10.24040/sap.2025.12.2.78-86>

Abstract:

CZERWIŃSKA-KORAL, Katarzyna: *Concept of Agricultural Ownership*. An agricultural undertaking is a special object (reference) of property law. Relying on a broader and more comprehensive treatment of ownership right and on a functional approach to ownership, Professor Andrzej Stelmachowski created a concept of agricultural ownership. That concept allows one not only to approach the topic of ownership (and other proprietary rights) in a broader manner, but it also allows for accounting for a special object of ownership such as an agricultural holding. What is important, it provides for special protection of the agricultural holding as an object of ownership. The concept also justifies the legislator's imposing a number of duties on the agricultural holding owner (agricultural producer) in view of the ever-changing social needs and the dwindling resources.

Key words:

Ownership, agricultural holding, rights, duties, social function of ownership, property

Introduction

Out of the total number of agricultural holdings located within the European Union, 14 percent are located in Poland. Compared with other EU member states, Poland is the leader in terms of agricultural land owned by farmers who own more than 75 percent of agricultural land in the country.² That is why the topic of ownership in relation to agricultural holding and the concept of agricultural ownership is of interest.

The concept of agricultural ownership was created by the Polish civil law lawyer and agrarian, Professor Andrzej Stelmachowski. Starting his deliberations from the Roman triad of owner's rights, Professor Stelmachowski ultimately departed from the understanding of ownership as the absolute right that gives its holder the unlimited right to dispose of the object of law. The Professor based his concept on a broader and

* Katarzyna Czerwińska-Koral PhD., lecturer at University of Silesia in Katowice, Poland, ORCID: <https://orcid.org/0000-0001-9079-5297>

1 The article was created as part of a placement at the Faculty of Law at the Matej Bel University in Banská Bystrica, Slovakia.

2 <https://wiescirolnicze.pl/newsy/w-tych-krajach-ue-jest-najwiecej-gospodarstw-rolnych-polska-w-czolowce/> (Accessed: 3 July 2025). Unlike in Slovakia, where 90% of agricultural land is leased – cf. LAZÍKOVÁ J., BANDLEROVÁ, A. Agricultural land lease in Slovakia, In *XV World Congress Of Agricultural Law*, R. Budzinowski (ed.), Contemporary Challenges of Agricultural Law: Among Globalization, Regionalisation and Locality Poznań 2018, p. 229.

much more comprehensive treatment of ownership right. The concept of agricultural ownership he created accounts for a broader approach to the object of ownership, while also accounting for the specific nature of agricultural holding as an object of ownership.

1. Sources of agricultural ownership concept

The roots of a broader approach to private property may be found in the works of Saint Thomas Aquinas and his followers, primarily in the idea of socialisation of property and social solidarity.³ The representatives of those movements believe that private property is no longer an individual's right and becomes a social function. They recognise that the owner is not the authorised person, but merely a representative of the society who manages the object of property on its behalf.⁴ Since ownership is a social obligation, the owner should use the thing while taking into consideration the needs of the society at large.

It has been noted that there are certain restrictions to ownership. The extent and the bounds of the restrictions are defined by the current needs of the society and of the State.⁵ Being a part of a community, people have the ability to fulfil their plans, but they must also accept the restrictions on their freedom arising from the interests of the group in which they live.⁶ Currently, constitution writers are increasingly drawing attention to the social functions of ownership while relying on the thesis that ownership entails responsibility, and its use should serve the public interest. An example of such an approach is found in Article 20(3) of the Constitution of the Slovak Republic of 1 September 1992, which reads as follows: "The ownership is binding. It shall not be misused causing injury to others or in contradiction with the public interests protected by the law. The exercise of right in property must not be detrimental to the health of other people, nature, cultural sites or the environment beyond the margin laid down by a law".⁷ Likewise, in Article 14(2) of the German Constitution (Basic Law for the Federal Republic of Germany), we read these words: "Property entails obligations. Its use shall also serve the public good."⁸

3 The beginnings of the (Catholic) social solidarity are believed to go back to *Rerum novarum* (1891), encyclical of Pope Leo XIII and then *Quadragesimo anno* (1931), the encyclical of Pope Pius XI, followed by the so-called *Ecole de Nîmes* (Charles Gide and his followers) and the doctrine of Léon Duguit.

4 DUGUIT, L. *Kierunki rozwoju prawa cywilnego od początku XIX wieku*, Warsaw, Krakow 1938, p. 126.

5 CARO, L. *Liberalizm i kapitalizm*, Włocławek 1937, p. 12; ZOLL, F. *Z zagadnień funkcjonalizmu własności na tle spuścizny po Léonie Duguit*. In: *Przeгляд Notarialny*, 1947, p. 27.

6 JHERING, R.v. *Der Zweck im Recht*, Vol. 1, Leipzig 1877, p. 99.

7 Polish version at www.libr.sejm.gov.pl (Accessed: 3 July 2025). English version at: <https://www.prezident.sk/upload-files/46422.pdf> (Accessed: 1 August 2025).

8 Polish version at: www.libr.sejm.gov.pl/tek01/txt/konst/niemcy-01.html (Accessed: 3 July 2025). English version at https://www.gesetze-im-internet.de/englisch_gg/englisch_gg.html (Accessed: 1 August 2025)

In German science, such an approach to ownership or property is called “Sozialbindung”, or social obligation of private property. In France, it is called socialisation of law (*socialisation du droit*). In Poland, a unique concept based on similar ideas was built by Professor Andrzej Stelmachowski.

2. Essence of agricultural ownership concept

Professor Andrzej Stelmachowski perceived the ownership right in a broad and comprehensive manner. He saw it not only as the owner’s right, but also as the owner’s duties (mainly under public law) which determine the manner of exercising ownership over a thing. Professor Stelmachowski concluded that ownership is a set of rights and duties, and that ownership is a right that is effective towards the general public, but it is also limited due to the needs of the general public.⁹

The concept of agricultural ownership is special for several reasons, one of them being the object of that right.¹⁰ A. Stelmachowski commenced his deliberations by pointing the attention to the inadequacy of the narrow term of “thing” in reference to civil rights.¹¹ It was particularly evident in the case of an agricultural holding which cannot be treated as a “thing” within the meaning of the civil code. According to the Polish Civil Code (hereinafter: “CC”), an agricultural holding is understood as agricultural land together with forest lands, buildings or parts of buildings, equipment and livestock if they are, or may be, an organised single economic unit, together with the rights related to the running of an agricultural holding (Article 55³). An agricultural holding according to this definition has a unique nature, i.e. it comprises an active organised estate. As a result, civil-law solutions which address things are insufficient to define the legal situation of an agricultural holding.

That is because an agricultural holding as an object of ownership has a unique nature, i.e., it comprises an active organised estate. As a result, civil-law solutions which address things are insufficient to define the legal situation of an agricultural holding. That is why he drew the attention to the theory of a broader understanding of things which was created by Fryderyk Zoll. F. Zoll made a distinction between rights in rem in a strict sense of the term which refer to the notion of thing and rights in rem in a broader sense of the term, which were called “rights to similar things” and which included the right to enterprise.¹² A. Stelmachowski recognised the need for a broader approach to the object of ownership right in agriculture in that he stated that “the first step should be to recognise “a thing in a broader sense of the term” as a point of reference for rights under civil law, first and foremost the right of ownership. He

9 STELMACHOWSKI, A. *Wstęp do teorii prawa cywilnego*, Warsaw 1969, p. 227, 228; A. STELMACHOWSKI, *Zarys teorii prawa cywilnego*, Warsaw 1998, p. 206.

10 CZERWIŃSKA-KORAL, K. Współczesny rozwój koncepcji własności rolniczej. In *Prawo i Polityka. W 100. Rocznice urodzin Profesora Andrzeja Stelmachowskiego*, P. Czechowski, A. Niewiadomski (eds.), Warsaw 2025, pp. 130-131.

11 Also presented in the literature on the topic: ZOLL, F. *Prawa rzeczowe na ziemiach polskich*, Warsaw-Krakow 1920, pp. 20, 25, 26; TOPIŃSKI, J. *Prawo gospodarki uspołecznionej w zarysie*, Warsaw 1966, p. 14.

12 Cf. ZOLL, F. *Prawa rzeczowe na ziemiach polskich*, Warsaw-Krakow 1920, pp. 25, 38.

recognised an enterprise and an agricultural holding which is an active estate as things within a broader sense of that term.¹³

The issue of the ownership object does not extend to an agricultural holding only; it is a broader issue. One may come across a broader perspective on the ownership object (not only in regard to things) in the various currently existing legal systems.¹⁴ One example may be the concept of ownership which underlies the Czech Civil Code. In § 1011 of the Czech Civil Code, it is stated that “Everything that belongs to someone, all his corporeal and incorporeal things constitute the person’s ownership”. Furthermore, the Dutch law has an even more in-depth definition of ownership which uses the term of property goods (*goed, bien*).¹⁵

Such a broad perspective on ownership corresponds to ownership under constitutional law. In Articles 20 and 21 of the Constitution of the Republic of Poland¹⁶, the constitution writer uses the term “ownership” in a broader sense to denote all proprietary rights (assets), that is ownership right and other proprietary rights. The notion of ownership is also defined in a broader manner in contemporary constitutions than only in regard to the ownership of things, and it comprises any property status of a natural person and of a legal entity.¹⁷

Professor Stelmachowski concluded that since ownership was a set of rights and duties, then agricultural ownership with an agricultural holding as the ownership object (point of reference) was also a set of rights and duties.

What is characteristic about agricultural ownership is that the owner has not only the rights, but also duties relating to specific individuals and to the state which represents the interest of the society as a whole. In return for proper exercise of agricultural ownership, the owner has the right to count on the state’s protection as he exercises his ownership right.

At the same time, the author of the said concept feared that excessive restrictions would be imposed on the ownership right¹⁸ which is the reason why he drew particular attention to the protection of the agricultural holding. It is, however, not about protection from the civil law perspective in regard to things (real property protection), but also about protection of an agricultural holding as property which is a special object, and protection due to the function of the ownership right as such.

13 STELMACHOWSKI, A. Przedmiot własności w prawie cywilnym. In *Studia Iuridica Agraria* 1994, Vol. 21, pp. 109, 111.

14 Unlike the Polish law, which has adopted a narrow understanding of a thing and according to the Polish Civil Code, only a corporeal object which has the characteristic of being self-standing upon separation is a thing. Pursuant to Article 45 of the Polish Civil Code: Only corporeal objects are things within the meaning of the Polish Civil Code.

15 English version of the Czech Civil Code at <http://obcanskyzakonnik.justice.cz/images/pdf/Civil-Code.pdf> (Accessed: 1 August 2025). FEKETE, I. *Občiansky zákonník - Veľký komentár* (2. zväzok), Žilina : Eurokódex, 2015, p. 9.

16 *Polish Journal of Laws of 1997*, No. 78, item 483.

17 FEKETE, I. *Občiansky zákonník - Veľký komentár* (2. zväzok), Žilina : Eurokódex, 2015, p. 9.

18 In that case, the ownership right would become *nudum ius* (or, “naked right”) – see: STELMACHOWSKI, A. Modele własności i ich uwarunkowania społeczno-ustrojowe. In *System prawa prywatnego*, Vol. III: Prawo rzeczowe, T. Dybowski (ed.), Warsaw 2007, p. 139.

Stelmachowski claimed that the agricultural ownership's attribute in the form of the use of the thing is the most difficult issue in terms of agricultural protection (Article 140 of the CC). In addition of the Civil Code provisions, there is a number of legal standards that shape the content of the agricultural holding ownership and how it is exercised. While running an agricultural holding, farmers must take into consideration the provisions on the agricultural land protection, on the environment protection, on spatial planning, construction law, tax law and multiple provisions governing the EU agricultural markets.¹⁹ Thus, we have an entire set of regulations which indirectly affect the farmer's ability to use his property. The sum of those regulations describes the legal situation of a farmer.

3. Practical implementation of the concept

The concept of agricultural ownership is not merely a theoretical concept, but it has a material application in the practical operation of family farms.²⁰

The implementation of the agricultural ownership concept is found primarily in the agricultural law provisions. The legislator implemented a number of provisions which treat agricultural holdings as a special object of ownership, for example in the provisions of the Agricultural System Structuring Act of 11 April 2003,²¹ where the perspective on the agricultural holding is created based on the perspective on agricultural holding presented in the Code.²² The legislator treats an agricultural holding as a separate object of law.²³ The examples given herein indicate the implementation of the agricultural holding concept in the legal regulations by presenting the agricultural holding as a specific property.

Furthermore, the Polish legislator implemented special principles of trade applicable to agricultural holding so as to protect it. The principle of family farm protection which is implemented both in the Agricultural System Structuring Act and in the State Treasury Agricultural Land Management Act is one of the rules governing

19 Cf. ŠTEFANOVIČ, M. *Pozemkové právo*, Bratislava : Eurounion, 2004, p. 36.

20 Pursuant to Article 23 of the Constitution of the Republic of Poland of 2 April 1997 (Journal of Laws of 1997, No. 78, Item 233, as amended), the family farm shall be the basis of the agricultural system of the State.

21 Consolidated text in the Polish Journal of Laws of 2022, item 2569.

22 According to Article 2(2), an agricultural holding should be understood as an agricultural holding within the meaning of the Civil Code, where the area of the agricultural property or the total area of agricultural properties is not smaller than one hectare.

23 For example, Article 55⁴ of the CC which governs the responsibility for the obligations relating to the running of agricultural holding in the event of disposing of an agricultural holding; Article 210 § 2 of the CC, Article 213ff of the CC relating to the abolition of shared ownership of the agricultural holding and division of the agricultural holding; Article 613ff relating to the contract farming and Article 981¹ of the CC which provides for the specific bequest of an agricultural holding, the provisions governing the agreement with the successor (Article 84ff of the Farmer Social Security Act of 20 December 1990 – consolidated text in Journal of Laws of 2025, item 197) or the provisions of the State Treasury Agricultural Land Management Act of 19 October 1991 (consolidated text in Journal of Laws of 2024, item 589).

agricultural property management. Last but not least, there are protective provisions applicable to the agricultural holding in the event of court-mandated enforcement proceedings in relation to that asset.²⁴

The implementation of the agricultural ownership concept in the decisions of the Polish common courts and administrative courts is a consequence of introducing the agricultural ownership concept to the legal regulations.²⁵

The concept of the agricultural ownership allows for justifying a broad range of duties imposed by legal regulations on the farmers which keep on growing.²⁶ In addition to the standard duties incumbent on the agricultural holding owner, and thus arising from the tax law, spatial planning law, construction law, water law, sanitary law, veterinary law, etc., there are also duties arising from the extension of the rural areas' functions. Non-production functions have an increasingly growing role in the rural areas in which agricultural holdings operate.²⁷ Extending the functions translates into growing duties imposed on the agricultural holding owners.²⁸ Currently efforts are taken to implement the European Union strategy, or the European Green Deal²⁹ and detailed EU strategies and policies addressing biodiversity, forest protection or the food system. The new duties arising from the European Green Deal covering such areas of agricultural policy, as: clean energy, biodiversity, the “from farm to fork”

24 Provisions of Articles 829¹ – 829⁴ of the Civil Procedure Code.

25 For example, the Supreme Court's Decision of 20 May 1998, (I CKN 668/97) Legalis; the Supreme Court's Decision on 25 September 2017, (IV CSK 102/17), Legalis; the Supreme Court's Decision of 5 November 2020, (II CSK 14/19), Legalis; the Supreme Administrative Court's Ruling of 13 February 2001, (II SA 432/00), Legalis; the Supreme Administrative Court's Ruling of 15 March 2005, (OSK 1285/04), Legalis; the Supreme Administrative Court's Ruling of 14 December 2022, (II OSK 1054/20), Legalis; Provincial Administrative Court in Poznań of 12 April 2024, (II SA/Po 477/23), Legalis.

26 JURCEWICZ, A., POPARDOWSKI, P. Przemiany własności w rolnictwie – kontekst systemowy z perspektywy prawa krajowego i unijnego. In *Studia Prawnicze* 2014, Vol. 1 (197), p. 33.

27 The following functions are currently listed: the green functions – landscape management, keeping biodiversity, creating conditions for wildlife; blue functions – water resource management, wind- and water energy generation, preventing floods; yellow functions – maintaining rural cohesion and vitality; maintaining cultural traditions. More on that topic: WILKIN, J. Wielofunkcyjność rolnictwa i obszarów wiejskich. In *Wyzwania przed obszarami wiejskimi i rolnictwem w perspektywie lat 2014–2020*. Kłodziński, M. (ed.), Warsaw 2008. BOHÁTOVÁ, Z., SCHWARCZ, P., SCHWARCZOVÁ, L., BANDLEROVÁ, A., TĚČÍK, V. Multifunctionality – interactions and implications: the case of the Podkylava village (Western Slovakia). In *European Countryside* 2016, No. 2, pp. 148-150; BOHÁTOVÁ, Z., SCHWARCZ, P., SCHWARCZOVÁ, L., BANDLEROVÁ, A., TĚČÍK, V., MURA, L. Multifunctionality and regional economy management in Kopaničarsky region of the Slovak Republic. In *Polish journal of management studies* 2015, Vol.12, No 2, pp. 26-27.

28 The new duties arising from the so-called European Green Deal covering such areas of agricultural policy, as: clean energy, biodiversity, the “from farm to fork” strategy; pollution elimination, climate-related activities, as well as duties relating to food quality arising from consumer protection, etc.

29 <https://www.consilium.europa.eu/pl/policies/european-green-deal/> (Accessed: 3 July 2025).

strategy; pollution elimination, climate-related activities, as well as duties relating to food quality arising from consumer protection, etc. There are new duties for agricultural producers which arise from those strategies, even upon accounting for the Competitiveness Compass.³⁰

4. Conclusion

The concept of agricultural ownership created by Professor Andrzej Stelmachowski which has been continued and developed in the Polish doctrine and used in judicature, allows one to formulate the following conclusions:

First, the concept of agricultural ownership shows that a broad perspective on the agricultural ownership object seems necessary. An agricultural holding is not a thing. Under Polish law, an agricultural holding comprises assets, a set of rights and duties which as such may be a reference to the agricultural ownership.

Second, the notion of ownership in the said concept is such a catch-all term that to some extent, particularly in terms of protection, it may refer not only to individual farmers, but also to agricultural cooperatives, farming enterprises (farming companies), naturally upon accounting for the specific nature of a given legal form. What is more, special protection of an agricultural producer in terms of agricultural ownership should not only apply to owners as ownership rights subjects within a narrow understanding arising from the Code, but also to leaseholders. The right to use agricultural land under a lease agreement is an asset and as such, it is a part of the broad notion of “agricultural ownership”.

Third, agricultural ownership, as it is understood currently, has functional characteristics that derive from the ever-broadening duties imposed on the agricultural holding owner (agricultural producer). The agricultural holding owner has duties relating to specific individuals and to the state which represents the interest of the society as a whole. In return for proper exercise of agricultural ownership, the owner has the right to count on the state’s protection as he exercises his ownership right. Furthermore, that concept fits into a broader context of the functional approach to ownership.³¹ The owner and any other entity who has a certain right in rem (the right to use a thing, a right). Such ever-broadening duties of the agricultural producers can be justified by the concept of agricultural ownership in view of the ever-changing social needs and the dwindling resources.

Fourth, the concept of agricultural ownership fits into the discussion in the literature on a broad perspective on the ownership object in general.³² It provides the foundation for formulating a request for the sense of a broader perspective on the object of the ownership right and other rights in rem.

30 <https://www.consilium.europa.eu/pl/policies/competitiveness-compass/> (Accessed: 3 July 2025).

31 FEKETE, I. *Občiansky zákonník - Veľký komentár* (2. zväzok), Eurokódex, 2015, p. 9-11.

32 FEKETE, I. *Občiansky zákonník - Veľký komentár* (2. zväzok), Eurokódex, 2015, pp. 9-10; Ł. ŻELECHOWSKI. In *Kodeks cywilny. Komentarz*, W. Borysiak (ed.), Legalis.

Bibliography:

- BOHÁTOVÁ Z. – SCHWARCZ, P. – SCHWARCZOVÁ, L. – BANDLEROVÁ, A. – TEČÍK, V. 2016. Multifunctionality – interactions and implications: the case of the Podkylava village (Western Slovakia). In *European Countryside*, 2016, No 2.
- BOHÁTOVÁ Z. – SCHWARCZ, P. – SCHWARCZOVÁ, L. – BANDLEROVÁ, A. – TLČÍK, V. – MURA, L. 2015. Multifunctionality and regional economy management in Kopaničarsky region of the Slovak Republic. In *Polish Journal of Management Studies*, 2015, Vol.12, No 2.
- CARO, L. 1937. *Liberalizm i kapitalizm*, Włocławek, 1937, p. 12;
- CZERWIŃSKA-KORAL, K. 2025 Współczesny rozwój koncepcji własności rolniczej. In *Prawo I Polityka. W 100. Rocznicę urodzin Profesora Andrzeja Stelmachowskiego*, P. Czechowski, A. Niewiadomski (eds.), Warsaw, 2025.
- DUGUIT, L. 1938. *Kierunki rozwoju prawa cywilnego od początku XIX wieku*, Warsaw, Krakow, 1938.
- FEKETE, I. 2015. *Občiansky zákonník - Veľký komentár (2. zväzok)*, Žilina : Eurokódex, 2015. 900 p.
- JHERING, R. 1877. *Der Zweck im Recht*, Vol. 1, Leipzig 1877.
- JURCEWICZ, A. – POPARDOWSKI P. 2014. Przemiany własności w rolnictwie – kontekst systemowy z perspektywy prawa krajowego i unijnego. In *Studia Prawnicze* 2014, Vol. 1 (197).
- LAZÍKOVÁ, J. – BANDLEROVÁ, A. 2018. Agricultural land lease in Slovakia. In *XV World Congress of Agricultural Law*, R. Budzinowski (ed.), Contemporary challenges of Agricultural Law: Among Globalization, Regionalisation and Locality Poznań 2018.
- STELMACHOWSKI, A. 1969. *Wstęp do teorii prawa cywilnego*, Warsaw, 1969.
- STELMACHOWSKI, A. 1998. *Zarys teorii prawa cywilnego*, Warsaw, 1998.
- STELMACHOWSKI, A. 2007. Modele własności i ich uwarunkowania społeczno-ustrojowe. In *System prawa prywatnego*, Vol. III: Prawo rzeczowe, T. Dybowski (ed.), Warsaw, 2007.
- ŠTEFANOVIČ, M. 2004. *Pozemkové právo*, Bratislava : Eurounion, 2004. 304 p.
- TOPIŃSKI, J. 1966. *Prawo gospodarki uspołecznionej w zarysie*, Warsaw, 1966.
- WILKIN, J. 2008. Wielofunkcyjność rolnictwa i obszarów wiejskich. In *Wyzwania przed obszarami wiejskimi i rolnictwem w perspektywie lat 2014–2020*, M. Kłodziński (ed.), Warsaw, 2008.
- ZOLL, F. 1920. *Prawa rzeczowe na ziemiach polskich*, Warsaw-Krakow, 1920.
- ZOLL F. 1947. Z zagadnień funkcjonalizmu własności na tle spuścizny po Léonie Duguit. In *Przegląd Notarialny*, 1947.
- ŻELECHOWSKI, Ł. In Kodeks cywilny. Komentarz, W. Borysiak (ed.), Legalis.

Summary: Concept of Agricultural Ownership

In the article, the author took up the topic of the functional perspective on ownership. Ownership is not only about the broadest right of the owner to a thing. Ownership is also about duties. Ownership is a set of rights and duties. The concept of agricultural ownership presented herein is special not only because of a broad perspective on ownership. Its specific nature also derives from the agricultural holding as an object of ownership. The concept of agricultural ownership allows for justifying a broad spectrum of duties imposed by the legislator on the agricultural holding owner (the agricultural producer).

Katarzyna Czerwińska-Koral, PhD.

University of Silesia in Katowice

Faculty of Law and Administration

ul. Bankowa 12

40-007 Katowice

Poland

e-mail: katarzyna.czerwinska-koral@us.edu.pl



Obsah článku podlieha licencií Creative Commons Attribution 4.0 International Licence CC BY (Katarzyna Czerwińska-Koral).