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ARTIFICIAL CONDITIONS AS AN ABUSE OF RIGHTS IN PUBLIC AID FROM THE COMMON AGRICULTURAL POLICY

Abstract

This article presents an issue related to the creation of artificial conditions in order to obtain financial assistance from the Common Agricultural Policy. The occurrence of artificial conditions has been assessed primarily in terms of the occurrence of the abuse of rights. In this respect, the most relevant judgments of the Court of Justice of the EU have been analysed. The legal possibilities of preventing artificial conditions and protecting the financial interests of the EU are also presented. Additionally, an assessment of the occurrence of artificial conditions in the context of the granting of state aid has been made.

KEYWORDS

artificial conditions, Common Agricultural Policy, abuse of rights, state aid, European finance, agricultural law

SŁOWA KLUCZOWE

sztuczne warunki, wspólna polityka rolna, nadużycie prawa, pomoc państwa, finanse europejskie, prawo rolne

INTRODUCTION

Artificial conditions are an important issue in guaranteeing the protection of EU financial interests.¹ The creation of artificial conditions in order to obtain public aid in the form of European funding can be classified as an abuse of the law.² The only question that arises, which will be analysed below, is when artificial conditions occur. What conditions would lead to a refusal to grant aid from the Common Agricultural Policy, or even to taking this aid away on the basis of the creation of artificial conditions (in a situation where public funds have been defrauded)? At the same time, the authority may abuse the procedure, which in itself will also be an abuse of the law, as we will describe later in this article.

The regulations on artificial conditions are primarily contained in European law, from which the regulations on aid to farmers also derive. They are a key issue in the assessment of the granting of aid, as well as in the subsequent control of the correctness of the use of the funds. Simultaneously, the provisions are so general that in the process of interpreting them, it is impossible not to refer to the case law of the EU Court of Justice, as well as other national courts. The assessment of the existence of artificial conditions always arises in the process of interpreting the rules and may be subject to various errors.

The article will outline interpretative concerns regarding artificial conditions in agriculture in the context of benefiting from the Common Agricultural Policy aid. In terms of the beginning of the new European funding period 2023-2027, this issue needs to be reassessed and possible approaches in the interpretation of the law need to be identified. A proper understanding of the artificial conditions from the start will allow farmers to avoid problems with the classification of their activities and their ability to apply and account for specific funding. This is all of importance as it is only through the interpretation of the European court that the meaning of artificial conditions has been established. The legislation in this area needs urgent intervention.

¹ B. Jeżyńska, *Sztuczne warunki jako forma naruszenia interesów finansowych Unii Europejskiej*, (in:) *Nadużycie prawa przez beneficjenta Wspólnej Polityki Rolnej Unii Europejskiej*, P. Litwiniuk (ed.), Warsaw 2020, pp. 97-106.

² P. Czechowski, *Wprowadzenie do problematyki nadużycia prawa przez beneficjenta Wspólnej Polityki Rolnej*, (in:) *Nadużycie prawa przez beneficjenta Wspólnej Polityki Rolnej Unii Europejskiej*, P. Litwiniuk (ed.), Warsaw 2020, pp. 7-20.

The key provision for the assessment of the introduction of artificial conditions is the regulation of Article 60 of Regulation (EU) No. 1306/2013 of the European Parliament and of the Council of 17 December 2013 on the financing, management and monitoring of the common agricultural policy and repealing Council Regulations (EEC) No. 352/78, (EC) No. 165/94, (EC) No. 2799/98, (EC) No. 814/2000, (EC) No. 1290/2005 and (EC) No. 485/2008. This provision stipulates that, without prejudice to specific provisions, no advantages resulting from the sectoral agricultural legislation shall be granted to natural or legal persons where it is established that the conditions required for obtaining such advantages have been artificially created contrary to the objectives of that legislation.

The consequence of the creation of artificial conditions is the rule provided for in Article 4(3) of Council Regulation (EC, Euratom) No. 2988/95 of 18 December 1995 on the protection of financial interests of the European Communities which states that actions aimed at obtaining an advantage in a manner contrary to the relevant objectives of Community law applicable to the case in question by artificially creating conditions for obtaining that advantage shall lead to a refusal to award or a withdrawal of the advantage.

ARTIFICIAL CONDITIONS IN JURISPRUDENCE

For the proper interpretation of the above provisions, it is necessary to know how they are interpreted by both national courts and the Court of Justice. In the judgment C-434/12 *Słynczewa siła EOOD v. Izpylnitelen direktor na Dyrżawen fond “Zemedelie”*, it was held that “proof of a practice constituting abuse on the part of a potential beneficiary of such support requires, first, the existence of a set of objective circumstances from which it is apparent that, despite formal compliance with the conditions laid down by the relevant legislation, the objective pursued by that legislation has not been achieved and, second, the presence of a subjective element in the form of an intention to obtain an advantage conferred by the Union legislation by artificially creating the conditions required for obtaining it”. (cf. Case C-515/03 *Eichsfelder Schlachtbetrieb* [2005] ECR I-7355, paragraph 39 and the case law cited therein).³ This implies that two conditions must exist for the artificial conditions to arise: an objective and a subjective one. The fulfilment of these conditions cumulatively often raises quite a number of problems. While the assessment of objective prerequisites by the body applying the law does not raise major doubts, it is not so obvious with the subjective approach.

³ See the judgment of 14 December 2000 in Case – C110/99 – *Emsland-Stärke* [2000] ECR I11569, paragraphs 52 and 53.

What is also important for interpreting the meaning of artificial conditions is the judgment of 14 December 2000 – Case C-110/99 – *Emsland-Stärke GmbH*. In particular, it is significant to emphasise the position of the European Commission quoted in this judgment regarding the existence of an abuse of rights in the case of artificial conditions. In its view, the Commission points out that the infringement consists of three elements to be assessed in the case of artificial conditions. These are: the objective element, the subjective element and the legal-procedural element.

As is clear from the *Emsland-Stärke GmbH* judgment, paragraphs 39 and 40 constitute the essence of the content of the interpretation of European law relating to the interpretation of the concept of ‘creation of artificial conditions’ as defined in EU legislation:

“Thesis 39: In the Commission’s view, the concept of violation of rights has three elements:

– The objective element, which is to be understood as proof that the conditions for the grant of the benefit have been artificially determined, that is to say, that the activity was not carried out for an economic purpose, but only for the purpose of obtaining from the Community budget financial assistance related to such activity. This question requires an analysis, on a case-by-case basis, of both the meaning and purpose of the Community provisions in question and the activity of a reasonable economic operator who manages his affairs in accordance with the applicable legislation and current commercial and economic practices in the sector concerned.

– The subjective element, namely the fact that the activity was carried out essentially for the purpose of obtaining a financial benefit that is at odds with the objective of the Community rules.

– The legal-procedural element on the burden of proof. The burden of proof lies with the competent national administrative authority. Nevertheless, in the case of the most serious violations, even evidence based on a presumption of fact, which can shift the burden of proof, is admissible.

Thesis 40: It is for the national court to determine whether all three elements are present”.

The cited ruling makes it clear that the “activities of a reasonable business participant who manages his affairs in accordance with the applicable law and current commercial and economic practices in the industry in question”⁴ should be assessed on a case-by-case basis.

⁴ In deciding the above case – in para. 52)-54) of the *Emsland-Stärke* Judgment – the CJEU stated in turn that: “Thesis 52. A finding of infringement requires, in the first instance, the existence of a set of objective circumstances from which it is apparent that, despite formal compliance with the conditions laid down in the relevant regulations, the objective pursued by those regulations has not been achieved. Thesis 53. This finding also requires, secondly, the existence of a subjective element consisting of an intention to obtain the benefit of the European Union regulations by artificially creating the prerequisites required to obtain it. The existence of this subjective element can be established, *inter alia*, by evidence of collusion between a Community exporter re-

It should also be pointed out that, for the existence of artificial conditions,⁵ it is important to assess whether the objectives pursued by European law, in particular Article 39 of the Treaty on the Functioning of the EU, in terms of achieving the objectives of the CAP, and the provisions of the regulations relating to the aid granted, have been achieved. Through the aid granted to farmers, the objectives set in each payment received are usually achieved. First and foremost, the objective set out in Article 39(1)(a) TFEU of “increasing agricultural productivity by promoting technical progress and by ensuring the rational development of agricultural production and the optimum utilisation of the factors of production, in particular labour” is achieved.

The objective in Article 39(1)(b) TFEU of “thus ensuring a fair standard of living for the agricultural community, in particular, by increasing the individual earnings of persons engaged in agriculture” is also an important objective to be achieved. This provision which is fundamental for the Common Agricultural Policy cannot be ignored when interpreting the existence or lack of artificial conditions. Article 39(1) TFEU is crucial for assessing the operation of aid beneficiaries in accordance with the law. A breach of this provision can lead to an abuse of the law.

As emphasised in the recognised doctrine of administrative law, “the clarification of the legal construction of abuse is also important from the point of view of creating a control pattern for the actions not only of the beneficiaries but also of the entities of the authorities (public administration) involved in the process of distributing funds from support programmes (and checking the correctness of their use by the beneficiaries)”.⁶ The question arises whether in Poland we have such a control pattern, based, at least, on the above-quoted judgments.⁷ Pub-

ceiving refunds and an importer of goods in a third country. Thesis 54. It is for the national court to determine the existence of those two elements, evidence of which must be adduced in accordance with the rules of national law, provided that the effectiveness of Community law is not affected”.

⁵ D. Łobos-Kotowska, „Sztuczne tworzenie warunków” w celu uzyskania płatności w ramach systemów wsparcia bezpośredniego jako kategoria prawna w regulacjach unijnych i krajowych, (in:) *Nadużycie prawa przez beneficjenta Wspólnej Polityki Rolnej Unii Europejskiej*, P. Litwiniuk (ed.), Warsaw 2020, pp. 39-54.

⁶ J. Jagielski, *Kilka uwagi o konstrukcji nadużycia prawa i jej zastosowania w zakresie pozyskiwania i wykorzystywania środków z programów UE dotyczących wspierania rolnictwa*, (in:) *Nadużycie prawa przez beneficjenta Wspólnej Polityki Rolnej Unii Europejskiej*, P. Litwiniuk (ed.), Warsaw 2020, p. 35.

⁷ Pursuant to Article 58(2) of Regulation 1306/2013, “Member States shall set up efficient management and control systems to ensure compliance with the legislation governing Union support schemes with a view to minimising the risk of financial loss to the Union”. And according to Article 59(1) of that Regulation, “Unless otherwise provided, the control system set up by the Member States in accordance with Article 58(2) shall include systematic administrative checks on all aid applications and payment claims. This system shall be supplemented by on-the-spot checks”. Also of relevance is the provision of Article 2(1) of Council Regulation (EC, EURATOM) No. 2988/95 of 18 December 1995 on the protection of the European Communities’ financial inter-

lic administration bodies, when assessing the occurrence of artificial conditions, should assess not only objective but also subjective premises.

As Jacek Jagielski points out in the quoted article, “in the light of the norms of the EU law and (even more so) national law, the existing juridical construction (juridical approach) of the abuse of rights in relation to the area of the so-called agricultural payments, based on the clause of creating artificial conditions seems to be too general, showing – which is raised by the doctrine of agricultural law – a clear deficit of taking into account the postulate of determinacy of legal regulations”.⁸ This vagueness of the conditions does not only allow for the assessment of the subjective elements but also of the required objective component. We, therefore, take the view that there is an urgent need to develop a legal category of artificial conditions. The current rules, based on functional interpretation, do not fulfil their role as a guarantor of legal certainty. The result is a kind of penalty in the form of a lack of funding or having to repay it. In particular, the assessment of artificial conditions *post factum*, after the grant has been obtained, raises a lot of emotions. Because the future of the farmer depends on the interpretation of the public administration body.

As Przemysław Litwiniuk emphasises, “as regards the existence of a subjective element, it is for the national court to ascertain the actual content and meaning of the application for financing at issue (repeated in the judgment in Case C-255/02, cited above). The national court may take into account, in this case, factual circumstances such as ties of a legal, economic or personal nature between the persons involved in the investment in question (as in the judgment in Case C-110/99). The existence of this subjective element may be reinforced by evidence of collusion, taking the form of intentional coordination between the various investors seeking support, in particular, where the investment projects are identical or where there are geographical, economic, functional or personal links”.⁹ In many of the cases analysed, there can be no collusion, let alone intentional coordination.¹⁰ Because this cannot be indisputably proven in the proceed-

ests (hereinafter: “Regulation 2988/95”), which states “Administrative checks, measures and penalties shall be introduced to the extent necessary to ensure the correct application of Community law. They must be effective, proportionate and dissuasive so as to provide adequate protection for the Communities’ financial interests”.

⁸ J. Jagielski, *Kilka uwagi o konstrukcji nadużycia prawa i jej zastosowania w zakresie pozyskiwania i wykorzystywania środków z programów UE dotyczących wspierania rolnictwa*, (in:) *Nadużycie prawa przez beneficjenta Wspólnej Polityki Rolnej Unii Europejskiej*, P. Litwiniuk (ed.), Warsaw 2020, p. 35.

⁹ P. Litwiniuk, *Z problematyki nadużycia prawa przez beneficjenta Wspólnej Polityki Rolnej*, “Przegląd Prawa Rolnego”, No. 2 (15)/2014, p. 52.

¹⁰ For example, in the case of personal links, a passage from the justification of the Judgment of the Voivodship Administrative Court in Szczecin of 16 April 2015, ref. No. I SA/Sz 206/15, in which the WSA stated that: “In the court’s opinion, the authorities of this circumstance (i.e. creation of artificial conditions – own footnote) in the case under consideration have demonstrated. The circumstances raised by the authorities in the form of the same person performing the func-

ings, and the existence of a personal or geographical link without an element of subjective coordination is not a premise for the existence of artificial conditions. This finding clearly demonstrates the need for a legal category of artificial conditions, which would make it possible to determine juridically, through a system of legal definitions, the existence of artificial conditions and thus to define an abuse of rights.

In the third stage of the examination of the existence of artificial conditions, according to the cited judgment, attention must be paid to formal and procedural aspects, including the issue of the burden of proof. One has to agree with the recognised view of the doctrine that “moreover, in the context of the validity of the principle of equality before the law, it is difficult to accept the legality of the verification activities undertaken by ARMA, imposing on the applicant the obligation to submit documents (invoices, evidence of tax payments, fees to the water company, contracts for the purchase of farm equipment, etc.) in a situation where other agricultural producers prove the fact of conducting agricultural activity only in the form of declarations submitted in the application process. It is worth bearing in mind that the legislator has provided for sufficient evidentiary force of the declarations submitted by applicants, hence the possibility of limiting their effectiveness in the course of administrative proceedings should result from a provision of generally applicable law”.¹¹ The procedural issues with regard to aid proceedings regulated in the Code of Administrative Procedure and in specific laws require amendments. Excessive and unjustified demands directed at

tion of president of the management board in both companies and the conclusion of a contract for the provision of services between the companies are not circumstances prejudging the fact that both companies are one agricultural producer. Indeed, one natural person may hold the position of a president in different companies and it does not follow from this fact that the companies are a single entity. For the record, it must be pointed out that it is clear from the wording of the second instance authority’s decision that there was no identity of shareholders in the two companies. Moreover, it should be pointed out that the conclusion of civil law contracts between two entities for the provision of services relating to the performance of agricultural work even demonstrates the legal separation of these entities. Another argument intended, according to the authorities, to support the unity of the agricultural producer was the fact that both companies (as well as other entities) had the same registered office. In the court’s view, this circumstance in itself cannot prejudice the fact that in a situation where several companies under commercial law have the same registered office, we are dealing with a single entity. There is no provision in the current legal order that would prohibit several entities from having the same registered office, nor is there a regulation from which it would follow that the possession of a single registered office by several entities results in the creation of a single entity”. In the judgment, the WSA unequivocally confirmed that the fact of the existence of links and the establishment of a single correspondence address for several beneficiaries is not a circumstance which, on its own, prejudices the creation by beneficiaries of artificial conditions required to obtain benefits.

¹¹ P. Litwiniuk, *O prawnej kategorii „stworzenia sztucznych warunków” z perspektywy zadań organu administracji publicznej właściwego w sprawach instrumentów WPR*, (in:) *Nadużycie prawa przez beneficjenta Wspólnej Polityki Rolnej Unii Europejskiej*, P. Litwiniuk (ed.), Warsaw 2020, p. 159.

the beneficiary to prove that he/she did not create artificial conditions seem to be an abuse of the law but on the part of the public administration body. For it is the body that bears the burden of proof and the burden of proving the existence of artificial conditions in order to collect financial aid from the Common Agricultural Policy in an unauthorised way.

PRINCIPLES OF THE FUNCTIONING OF ARTIFICIAL CONDITIONS

The public authority often imposes unlawful obligations to prove the non-existence of artificial conditions. The authority then relies on statements, documents and invoices submitted by the beneficiary, deriving negative legal consequences from them. In the light of the cited judgment and the above-mentioned doctrinal views, the authority not only does not have the right to refer to such evidence and derive negative legal consequences from it, but does not even have the right to demand it, due to the constitutional principle of equality before the law of all entities. It is up to the authority to prove the existence of artificial conditions. It is the authority that is obliged in this procedure to provide evidence and it bears the burden of proof. Shifting this obligation to the beneficiary, as we have emphasised, is an abuse of the right.

Usually, this third requirement of the *Emsland-Stärke* judgment is also not observed in the proceedings. It is the burden of proof that is placed on the beneficiary and the evidence presented by the beneficiary is interpreted against him/her both in proceedings before both instances of the authority and in court proceedings. This violates the constitutional principle of equality of subjects before the law. Other applicants, in the normal procedure, did not have to present such documents. This only illustrates the numerous flaws in the current legal construction of artificial conditions in Polish law. The need for a beneficiary to prove that he or she has not created artificial conditions can be compared to the need for a suspect to prove that he or she has not committed a crime. In this regard, there is a clear presumption of innocence in criminal law and it is for the public authorities to prove guilt. Given that the artificial conditions procedure can also be used in criminal proceedings,¹² this presumption of innocence should also be

¹² S. Żółtek, A. Leszczyński, *Wyludzenie wsparcia finansowego ze środków unijnych w rolnictwie z perspektywy klasycznego przestępstwa oszustwa (art. 286 § 1 k.k.)*, (in:) *Nadużycie prawa przez beneficjenta Wspólnej Polityki Rolnej Unii Europejskiej*, P. Litwiniuk (ed.), Warsaw 2020, pp. 253-268; cf. also J. Bilewicz, *Polska prokuratura a ochrona interesów finansowych WE – doświadczenia praktyczne*, (in:) *Ochrona interesów finansowych rozszerzonej Unii Europejskiej: nowe wyzwania, stare problemy. Materiały z międzynarodowej konferencji naukowej. Sopot, 16-19 marca 2006 r.*, C. Nowak (ed.), Warsaw 2007, p. 51; M. Strzelecki, *O kryminalistycznych*

transferred to the element of administrative proceedings that aims to prove the existence of artificial conditions.

Undeniably, the linking of the administrative proceedings with possible criminal proceedings and the arguments set out in the *Emsland-Stärke* judgment support the view that the procedural element of artificial conditions has not been fulfilled and that the need for the beneficiary to prove the non-existence of artificial conditions violates the principle of equality before the law expressed in the Polish Constitution as well as the principle of the presumption of innocence. As a result, the evidence provided, as well as the statements, negatively burden the beneficiary.

Without this evidence provided by the beneficiary, many of the arguments of the public administration body would have no factual basis. In this case, the goodwill of the beneficiary to defend his own legal interest is turned against him. There are no legal grounds in the light of the case law to require the beneficiary to provide evidence and thus, to self-incriminate.¹³

As Marcin Wiącek emphasises, “the determination, whether a specific ailment imposed on the perpetrator of an infringement of the law has the nature of a ‘punishment’ within the meaning of Article 42(1) of the Constitution is of fundamental significance from the point of view of the legal guarantees to be applied to the perpetrator. For, firstly, a ‘punishment’ within the meaning of Article 42(1) of the Constitution should be inflicted in an appropriate procedure by a common court in the form of a judgment, and not by a public administration body – even bearing in mind the possibility of initiating a judicial review of a public administration decision. Secondly, a person held criminally responsible is entitled to

aspektach wyludzenia płatności bezpośrednich i uzupełniających w świetle badań aktowych, “Prokuratura i Prawo” No. 6/2014.

¹³ This is also confirmed by the jurisprudence of provincial administrative courts. The judgment of the WSA in Warsaw of 5 November 2014, VIII SA/Wa 676/14, indicates that “one cannot agree with the argumentation of the ARMA authorities, based on Article 21(3) of the above-mentioned Act, that in a case in which it is alleged that an entity applying for the granting of payments has created artificial conditions, it is incumbent on the applicant to prove that there has been no creation of artificial conditions by the applicant to obtain such payments. In the Court’s view, it is for the ARMA authorities to prove that the intention of the entity concerned is to create ‘artificial conditions’. It is incumbent upon the authorities, as those who wish to derive the relevant legal consequences arising from such a situation, to seek evidence. The authorities, as the ones who want to draw the appropriate legal consequences from such a situation, are obliged to search for such evidence, and such findings must be unambiguously deduced from the evidence gathered and subsequently examined by the authorities, which constitutes the basis for the decision. Otherwise, the findings of the authorities must be considered incomplete and insufficient to prove the creation of the so-called ‘artificial conditions’ by a given entity in order to obtain benefits contrary to the objectives of the support scheme in question, i.e. the receipt of payments”. - cf. also T. Kalita, *Praktyka orzecznicza sądów administracyjnych w zakresie spraw dotyczących sztucznego tworzenia warunków do przyznania płatności przez Agencję Restrukturyzacji i Modernizacji Rolnictwa*, “Rocznik Administracji Publicznej” No. 4/2018, p. 67.

the right of defence (Article 42(2) of the Constitution) and the presumption of innocence (Article 42(3) of the Constitution). Thirdly, the basis for the imposition of punishment should be culpability, i.e. the individual reprehensibility of the conduct, consisting in the possibility of avoiding unlawful conduct. Fourthly, the *ne bis in idem* principle, which prohibits double punishment for the same act, is derived both from the Constitution (Article 2) and international law. While – under certain conditions – it is permissible to impose a criminal sanction and an administrative sanction for the same act, it is excluded to impose a criminal sanction on the perpetrator more than once, also when one of them has been ‘disguised’ in the form of an administrative sanction¹⁴. Distinguishing between an administrative and criminal sanction in the case of artificial conditions is not straightforward. Certainly, formal-legal issues related to the burden of proof significantly impede the citizen’s confidence in the rule of law.

The explicit linking of the quasi-criminal aspect of seeking penalties for the creation of artificial conditions makes it clear that the burden of proof is on the authority. Forcing the beneficiary to self-incriminate violated not only the principle of equality before the law but also the constitutional guarantees and limits of punishment. *De lege ferenda* it should be postulated to define the activities that a public administration body may carry out as part of its control activities aimed at identifying artificial conditions in a given aid procedure. Otherwise, requesting evidence from the beneficiary to be used against him or her will constitute a substantial abuse of the law.

It is worth emphasising, following Mariusz Jabłoński, that “the constitutional principle of citizen’s trust in the state does not allow to burden individuals (private law subjects) with the consequences of erroneous interpretation and application of the law by public administration bodies, most often resulting from the application of vague concepts¹⁵. This circumstance has been repeatedly pointed out by the Constitutional Tribunal in its previous case law, at the same time referring to the jurisprudence of administrative courts taking the position that “interpretative failures of a state administration body (...) cannot cause negative financial consequences for the entity that acted in trust in the knowledge of this body and the correctness of the received (...) opinion (...)”. The artificial conditions and their understanding fully demonstrate the importance of functional interpretation in

¹⁴ M. Wiącek, *Odpowiedzialność karna w świetle Konstytucji RP (wybrane zagadnienia)*, (in:) *Nadużycie prawa przez beneficjenta Wspólnej Polityki Rolnej Unii Europejskiej*, P. Litwiniuk (ed.), Warsaw 2020, pp. 282-283 (cf. also M. Wiącek, *Nakładanie kar administracyjnych w świetle Konstytucji RP*, (in:) *Wdrożenie ogólnego rozporządzenia o ochronie danych osobowych. Aspekty proceduralne*, E. Bielak-Jomaa, U. Góral (ed.), Warsaw 2018.

¹⁵ M. Jabłoński, *Konstytucyjne standardy stosowania zwrotów niedookreślonych i klauzul generalnych a kwestia definiowania nadużycia prawa przez beneficjenta Wspólnej Polityki Rolnej*, (in:) *Nadużycie prawa przez beneficjenta Wspólnej Polityki Rolnej Unii Europejskiej*, P. Litwiniuk (ed.), Warsaw 2020, p. 192.

law. Its misapplication may result in the necessity of repayment and, as a consequence, usually in the bankruptcy of the farmer.

In the constitutional aspect, it is also worth emphasising that “from the above analysis of the status and elements of the concept of creating artificial conditions, as being part of the broader construction of the abuse of rights, it follows that the norms of EU and national law show, in this respect, a rather significant deficit in the implementation of the postulate of the determinateness of legal provisions, understood as the requirement to formulate these provisions in a manner ensuring a sufficient degree of precision in determining their meaning and, above all, their legal effects, which should be treated as a threat of violation of the principle of trust of a citizen in the state and for the certainty of economic transactions arising from Article 2 of the Constitution of the Republic of Poland of the principle of citizen’s trust in the state and for the certainty of economic turnover”.¹⁶ Excessive demands directed at beneficiaries may constitute a violation of Article 2 of the Constitution of the Republic of Poland. Applicants, usually acting in good faith, are not obliged to prove that they did not create artificial conditions. It is the authority that should prove that such conditions were created. This fundamental statement is precisely the key element related to the assessment of the existence of abuse of rights.

In addition, as follows from the case law of administrative courts, the authority examining the case should assess the evidence comprehensively, referring to each of the party’s claims (cf. the judgment of the Supreme Administrative Court of 24 September 2020, ref. no. I GSK 513/18; judgment of the WSA in Poznań III SA/Po 1216/21; judgment of the WSA in Poznań III SA/Po 1215/21). Therefore, the authorities, but also the courts, often do not prove beyond reasonable doubt the existence of artificial conditions.

CONCLUSION

In conclusion, it should be stressed that when assessing artificial conditions, there is a possibility of a double abuse of rights. On the one hand, such abuse may be committed by a beneficiary creating artificial conditions and unjustifiably obtaining financial aid. On the other hand, such an abuse of rights may be committed by a public administration body obliging the beneficiary to prove that he or she did not create artificial conditions.

The determination of the existence of artificial conditions lacks both an unambiguous assessment of the objective and subjective prerequisites for the existence

¹⁶ P. Litwiniuk, *Z problematyki nadużycia prawa przez beneficjenta Wspólnej Polityki Rolnej*, “Przegląd Prawa Rolnego” No. 2 (15)/2014, p. 62.

of artificial conditions. There is usually no procedural element that determines the burden of proof, which has been shifted to the beneficiary. However, all these assessments are derived from case law and not from the law. We, therefore, reiterate our call for the legal category of artificial conditions to be given a juridical character. This will allow the precise determination of the presence or lack of artificial conditions. While we are aware of the difficulties of juridical determination of such a single universal definition, it should be emphasised that the current legal status not only creates uncertainty among beneficiaries, but also discourages them from obtaining aid, and thus distances them from the implementation of the objectives of the Common Agricultural Policy.

Therefore, in our view, it is currently difficult to determine unequivocally whether, in a given situation, artificial conditions have been created which would be indisputable and result in the absolute application of Article 4(3) of Council Regulation (EC, Euratom) No. 2988/95 of 18 December 1995 on the protection of the European Communities' financial interests. This is clearly underlined by the doctrine of administrative law that "Clarification of the nature of the abuse of rights in the area of agricultural payments and of the elements shaping this abuse as a legal institution is essential for its perception by the beneficiaries (beneficiaries) of support programmes as an objective and not based on subjective assessments of the correctness of the actions taken by those interested in obtaining aid funds".¹⁷

Currently, beneficiaries rely on the subjective assessment of the authority and the court as to the existence of artificial conditions. The lack of precisely defined conditions in the law cannot be a detriment to the beneficiary. It not only bankrupts him but actually ruins his life. Therefore, as long as the law is not amended by indicating objective criteria for artificial conditions in the case at hand, there can be no question of their indisputable existence and thus penalising the beneficiary of the aid.¹⁸

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¹⁷ J. Jagielski, *op. cit.*, p. 35 (cf. also M. Godlewska, *Pojęcie nadużycia prawa w prawie UE (cz. I)*, "European Judicial Review" 2011, No. 6(69), pp. 25-26; A. Stępkowski, *Nadużycie prawa a rozwój prawa*, (in:) *Nadużycie prawa*, H. Izdebski, A. Stępkowski (ed.), Warsaw 2003, p. 49.

¹⁸ Cf. P. Litwiniuk, *Abuso di diritto da parte del beneficiario della Politica Agricola comune (creazione di condizioni artificiali al fine di ricevere assistenza finanziaria)*, "Agricoltura Istituzioni Mercati" No. 1-2/2013; *idem*, *Z problematyki nadużycia prawa przez beneficjenta Wspólnej Polityki Rolnej*, "Przegląd Prawa Rolnego" No. 2 (15)/2014.

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