

PAWEŁ A. BLAJER

Jagiellonian University in Kraków, Poland  
e-mail: pawel.blajer@uj.edu.pl  
ORCID: 0000-0001-5535-5173

## On the invalidity of agricultural real estate acquisition in light of the Act on the shaping of the agricultural system\*

Della nullità dell’acquisto di un immobile agricolo  
alla luce della legge sulla formazione dell’ordinamento agrario

This paper aims to address the issue of the “invalidity of agricultural real estate acquisition” in light of Article 9 of the Act on the shaping of the agricultural system. The considerations presented in this paper reveal numerous flaws in this sanction and justify the urgent need for in-depth reflection on the sanction in the event of a breach of the provisions of the Act on the shaping of the agricultural system. The invalidity of agricultural real estate acquisition seems insufficient to achieve the public law objectives of the Act. On the one hand, it does not ensure the actual effectiveness of the Act’s regulations (e.g. in relation to acts of law other than juridical acts), and on the other hand, it raises doubts as to whether the entire juridical act performed in a manner inconsistent with the Act is invalid, or whether invalid is only its effect in the form of the acquisition of agricultural real estate. Even the very classification of invalidity under the provisions of the Act on the shaping of the agricultural system as absolute invalidity may raise doubts.

**Keywords:** agricultural law, agricultural real estate, shaping of agricultural system, absolute invalidity, sanctions

L’obiettivo del presente articolo è chiarire come interpretare la “nullità dell’acquisto di un immobile agricolo” alla luce dell’art. 9 della legge sulla formazione dell’ordinamento agrario. Le considerazioni svolte hanno messo in luce diverse criticità legate a questa sanzione, evidenziando altresì l’urgenza di una riflessione approfondita sulla sua adeguatezza in caso

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\* It is a publication written as part of the project No. 2021/41/B/HS5/01258 financed by the National Science Centre, Poland.

di violazione delle disposizioni della legge in oggetto. La nullità dell'acquisto di un immobile agricolo si rivela insufficiente a garantire il conseguimento degli obiettivi giuridici di interesse pubblico che questa legge si propone. Da un lato, essa non assicura l'effettiva efficacia delle disposizioni (ad esempio, rispetto a fatti diversi dagli atti giuridici), dall'altro, genera dubbi sull'estensione della nullità: non è chiaro se debba riguardare l'intero atto giuridico posto in essere in modo non conforme alla legge oppure soltanto il suo effetto specifico, ossia l'acquisto dell'immobile agricolo. Problemi interpretativi emergono perfino riguardo alla qualificazione della nullità definita dalla legge in oggetto come nullità assoluta.

**Parole chiave:** diritto agrario, immobili agricoli, ordinamento agrario, nullità assoluta, sanzioni

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## Preliminary remarks

The provision of Article 9 (1) of the Act of 11 April 2003 on the shaping of the agricultural system<sup>1</sup> stipulates that the acquisition of ownership of agricultural real estate, a share in the joint ownership of agricultural real estate, perpetual usufruct, a share in the joint perpetual usufruct of such real estate, and the acquisition of shares in a commercial company referred to in Article 3a (1) of the Act, made on the basis of a juridical act<sup>2</sup> contrary to the provisions of the ASAS, is invalid. This provision also specifies situations resulting in invalidity, including, among others, the performance of a juridical act without notifying the person entitled to the pre-emption right or without notifying the National Agricultural Support Centre (NASC) of its right to purchase agricultural real estate or shares in a commercial company in the cases specified in Articles 3b, 3c and 4(1) of the ASAS. The transfer of real estate without the consent of the Director General of the NACS, referred to in Article 2b(3) of the ASAS, is also invalid. Finally, the acquisition of agricultural property on the basis of false statements or false or misleading documents has the same effect. This provision, in a form essentially similar to its current content, was introduced into the Act on 30 April 2016 with the entry into force of the Act of 14 April 2016 on suspending the sale of real estate from the Agricultural Property Stock of the State Treasury and

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<sup>1</sup> Act of 11 April 2003 on the shaping of the agricultural system (Journal of Laws of 2024, item 423; hereinafter: ASAS).

<sup>2</sup> The term "juridical act" in this article refers primarily to contracts.

amending certain acts.<sup>3</sup> In the original version of the Act, the wording of Article 9 of the ASAS was fundamentally different. It stated that a juridical act performed in violation of the provisions of the Act or without notifying the person entitled to the pre-emption right or without notifying the Agricultural Property Agency of its right of purchase agricultural real estate is invalid.

The thorough amendment of Article 9 of the ASAS made in 2016 was generally met with negative reviews in the literature, as it was emphasised that it strongly interfered with the content of civil law concepts and the scope of civil procedure regulations.<sup>4</sup> This effect was a consequence of the parallel definition in Article 2(7) of the ASAS of the concept of “acquisition of agricultural real estate” within the meaning of that Act as the transfer of ownership of agricultural real estate or the acquisition of ownership of agricultural real estate as a result of a juridical act or a decision of a court or public administration body, as well as other acts of law. Despite the fact that almost 10 years have passed since the entry into force of the aforementioned amendment to the ASAS, the combination of legal norms resulting from the aforementioned provisions still causes significant discrepancies both in doctrine and in case law. Moreover, it may be argued that the unclear and imprecise wording of the amendment makes it contrary to the principles of proper legislation and incompatible with the fundamental principles of the Polish legal system.

The purpose of this article is to attempt to answer the question of how to understand “invalidity of agricultural real estate acquisition” in the light of Article 9 of the ASAS. This research objective will be achieved by analysing the legal nature of the “invalidity of acquisition” referred to in the aforementioned provision, as well as its scope. The issue of invalidity of acquisition in the case of acts of law other than juridical acts will also be examined. Much attention will also be devoted to procedural aspects of court rulings on the invalidity of real estate acquisition pursuant to Article 9(2) of the ASAS. However, the issue of the invalidity of the acquisition of shares in commercial companies, which is also referred to in Article 9(1) of the ASAS, will remain outside the scope of the analyses conducted in this study. Due to its complex nature, a discussion of this issue would go beyond the scope of this study.

The issue of the invalidity of the acquisition of agricultural real estate analysed in this article is the subject of divergent opinions in case law and

<sup>3</sup> Act of 14 April 2016 on suspending the sale of real estate from the Agricultural Property Stock of the State Treasury and amending certain acts (Journal of Laws of 2025, item 559).

<sup>4</sup> J. Bieluk, *Sankcja nieważności w ustawie o kształtowaniu ustroju rolnego*, in: P. Księżak, J. Mikołajczyk (eds.), *Nieruchomości rolne w praktyce notarialnej*, Warszawa 2016, p. 203 ff.

literature. It is therefore necessary to systematise many different views and positions in order to indicate which of them deserve to be taken into account in the current application of the ASAS. Thus, the issue addressed in this article deserves consideration both for theoretical reasons – as an attempt to resolve significant discrepancies in the literature and case law arising from the interpretation of the provisions of the ASAS, and for practical reasons – as an effort to reduce the risk that the application of the provisions of the ASAS entails for participants in real estate transactions.

## 1. The nature of the invalidity of real estate acquisition

The prevailing view in the literature and case law is that the invalidity of acquisition referred to in Article 9(1) of the ASAS is so-called “absolute invalidity.”<sup>5</sup> The very concept of absolute invalidity in legal science refers essentially to juridical acts.<sup>6</sup> In this context, when analysing the sanction of absolute invalidity of a juridical act referred to in Article 58 of the Civil Code, legal doctrine notes that an absolutely invalid juridical act does not and cannot produce any legal effects covered by the will of the parties. Invalidity arises by operation of law (*ipso iure*) and dates from the very beginning (*ab initio*), i.e. from the moment the invalid act was performed.<sup>7</sup> Furthermore, an absolutely invalid juridical act does not produce legal effects and cannot be validated, i.e. it cannot be “remedied.” Any person with a legal interest may invoke invalidity, not only the party to the juridical act. There is also nothing to prevent a person with a legal interest from invoking absolute invalidity in any proceedings, and a claim for a court to declare invalidity is not subject to a limitation period. Furthermore, courts and public administrative bodies should take into account the fact that the property was acquired in violation of the provisions of the Civil Code – if this is relevant to the case. Any ruling declaring the acquisition invalid is therefore purely declaratory in nature. A judgment in such a case, declaring the acquisition invalid, as well as a judgment dismissing the claim due to lack of legal interest, have

<sup>5</sup> Ibidem, p. 206 ff.; T. Czech, *Kształtowanie ustroju rolnego. Komentarz*, LEX 2025, Article 9; W. Gonet, in: P.A. Blajer, W. Gonet, *Ustawa o kształtowaniu ustroju rolnego. Komentarz*, LEX 2023, Article 9; P. Lewandowski, *Nieważność jako skutek prawnego naruszenia zasad zbywania gruntu*, in: J.J. Zięty, J. Dobkowski, A. Bieranowski (eds.), *Prawne uwarunkowania obrotu gruntami rolnymi w świetle ustawy o kształtowaniu ustroju rolnego*, Warszawa 2022, pp. 196–213 ff.

<sup>6</sup> D. Łobos-Kotowska, M. Stańko, *Ustawa o kształtowaniu ustroju rolnego. Komentarz*, LEX 2020, Article 9.

<sup>7</sup> M. Gutowski, *Nieważność czynności prawnej*, Warszawa 2017, Legalis.

no effect on the existence and scope of any invalidity of the juridical act. This is because it is a sanction of substantive civil law, producing an effect by virtue of the law itself and without the need to refer to the judicial factor.<sup>8</sup>

However, it is worth noting that the above view is not unanimously accepted in the literature. It presents a position according to which, on the basis of the ASAS, the invalidity referred to in Article 9 of that legislative act should not be considered absolute, and a judgment declaring such invalidity should be considered declaratory in nature. Consequently, in order to protect purchasers of agricultural real estate, a different understanding of the sanction should be adopted than considering it to be absolute invalidity. This would mean, in particular, that until a constitutional court ruling declaring invalidity becomes final, the juridical act would remain in force. The main argument in favour of this position would be, in particular, the assumption that the ASAS should be treated as a separate regulation, specific in relation to the provisions of Article 58 of the Civil Code.<sup>9</sup> This view, as an isolated one, has been criticised in the literature. It has been criticised for being in clear contradiction with the wording of the provision in question, which clearly refers to the sanction of absolute invalidity (the wording: “is invalid”), and Article 9(2) of the ASAS does not imply that a court ruling declaring a juridical act invalid is constitutive in nature.<sup>10</sup> However, it should be noted that even in slightly older doctrine, the assumption that the sanction of invalidity specified in the provisions of the Civil Code must be viewed categorically – as absolute invalidity – was questioned.<sup>11</sup> In support of this position, convincing arguments were put forward, in particular regarding the sanction adopted in the doctrine for violating the statutory pre-emption right to which the NASC is entitled.<sup>12</sup>

However, accepting the prevailing view that Article 9(1) of the ASAS refers to the sanction of absolute invalidity, it is necessary to address the issue of the meaning of the phrase “juridical act performed in violation of the provisions of the Law” as a ground for invalidity of the acquisition of agricultural real estate. There should be no doubt that the “Law” referred to

<sup>8</sup> Ibidem.

<sup>9</sup> J.J. Zięty, A. Kudrzycka-Szypiółło, *Charakter prawnego sankcji nieważności wskazanej w art. 9 ust. 1 ustawy o kształtowaniu ustroju rolnego w związku z nowelizacją tej ustawy*, “Journal of Modern Science” 2024, no. 1, pp. 446–447.

<sup>10</sup> T. Czech, *Kształtowanie ustroju...*, Article 9.

<sup>11</sup> Z. Truszkiewicz, *O kilku podstawowych zagadnieniach na tle ustawy o kształtowaniu ustroju rolnego (część II)*, “Rejent” 2017, no. 11, p. 38.

<sup>12</sup> Ibidem, pp. 38–39.

in the provision under analysis is the ASAS. In practice, this does not exclude situations where the acquisition of agricultural real estate will be invalid for reasons other than non-compliance with the provisions of the ASAS. In this regard, for example, the invalidity of a juridical act resulting from a violation of the norm resulting from Article 58 of the Civil Code (in particular with regard to an act aimed at circumventing the law or an act contrary to the principles of social coexistence), or failure to comply with a specific form required by law for a given juridical act (Article 73 § 2 of the Civil Code).

However, doubts may arise as to the correct understanding of the concept of a “juridical act performed in violation of the provisions of the Law.” As indicated above, Article 9(1) sentence 2 of the ASAS lists examples of situations entailing the sanction of invalidity. The way in which they are worded in this legislative act raises a number of doubts in the literature. For example, it is noted that performing a juridical act without notifying the person entitled to the pre-emption right should not lead to the invalidity of the contract, but only to the ineffectiveness of the acquisition of the right.<sup>13</sup> Similarly, failure to notify the NASC in the cases specified in Articles 3b, 3c and 4(1) of the ASAS should not result in the sanction of invalidity either, as this sanction is completely incomprehensible in this case.<sup>14</sup> It can also be concluded that irregularities in the course of administrative proceedings concerning the issuance of consent for the acquisition of agricultural real estate pursuant to Article 2a(4) of the ASAS, or consent for its sale pursuant to Article 2b(3) of the ASAS, leading ultimately to the invalidity of these decisions pursuant to Article 156 of the Code of Administrative Procedure, should not invalidate the acquisition of the agricultural real estate if the acquisition took place before the consent was declared invalid. The argument in favour of this correct position is, in particular, the link between the administrative decision that is the prerequisite for the juridical act and the juridical act itself.

Finally, a number of controversies arise from the wording referring to invalidity as a consequence of the acquisition of agricultural real estate on the basis of untrue statements or false or misleading documents. It appears that this provision refers to documents and statements that are relevant for assessing whether a juridical act is permissible under the provisions of the

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<sup>13</sup> A. Kunicki, *Zakres skuteczności prawa pierwokupu*, “Nowe Prawo” 1966, no. 12, p. 1533; M. Pazdan, *Bezwarkowa sprzedaż nieruchomości wbrew umownemu prawu pierwokupu*, in: *Problematyka prawa nieruchomości w praktyce notarialnej*, Lublin 1995, p. 133.

<sup>14</sup> Z. Truszkiewicz, *O kilku podstawowych zagadnieniach...*, p. 39.

ASAS.<sup>15</sup> However, it should not be applied in situations where a false statement does not constitute a prerequisite for the admissibility of the acquisition of real estate, as is the case with statements made pursuant to Article 7(6) of the ASAS<sup>16</sup> concerning the circumstances of the purchaser's fulfilment of the conditions specified in Articles 5 and 6 of the ASAS.

To sum up these considerations, it can be concluded that certainly not every violation of the provisions of the ASAS when performing a juridical act should result in of real estate acquisition. The literature even suggests a gradation of sanctions depending on the type of violations.<sup>17</sup> However, even in cases where the sanction of absolute invalidity seems to clearly result from the provisions of the ASAS, a closer analysis of the cases covered by it often allows for its rational questioning.

## 2. Scope of invalidity of real estate acquisition

It should be noted that paragraph 1 of Article 9 of the ASAS refers only to the invalidity of the acquisition of agricultural real estate contrary to the provisions of the Act. The wording of this provision therefore indicates a similarity with Article 6(1) of the Act on the Acquisition of Real Estate by Foreigners,<sup>18</sup> which also introduces a penalty of invalidity in the event of the acquisition of real estate by a foreigner contrary to the provisions of the Law. However, Article 58 of the Civil Code, which provides for the absolute invalidity of a juridical act that is contrary to the Law or aimed at circumventing the Law, is worded differently. Hence, in the literature on the ASAS, the position has been formulated that, in accordance with the accepted nature and scope of the sanction, Article 9(1) of the ASAS should be considered a specific provision in relation to Article 58 § 1 of the Civil Code.<sup>19</sup>

If this position is accepted, it should be consistently stated that Article 9(1) of the ASAS refers to the invalidity of the acquisition of agricultural real estate and not to the invalidity of a juridical act. For contracts obliging the transfer of ownership, this would mean that they cannot produce a material effect in the form of transfer of ownership – they are ineffective only in terms

<sup>15</sup> J. Bieluk, *Ustawa o kształtowaniu ustroju rolnego. Komentarz*, Warszawa 2024, p. 376.

<sup>16</sup> T. Czech, *Kształtowanie ustroju..., Article 9*.

<sup>17</sup> Z. Truszkiewicz, *O kilku podstawowych zagadnieniach..., p. 35.*

<sup>18</sup> Act of 24 March 1920 on the acquisition of real estate by foreigners (Journal of Laws of 2017, item 2278; hereinafter: AREF).

<sup>19</sup> T. Czech, *Kształtowanie ustroju..., Article 9*.

of transfer of ownership (or perpetual usufruct).<sup>20</sup> The binding agreement itself would remain valid and effective in terms of the obligations arising from it, but would not have any effect on the acquisition of agricultural real estate by the purchaser. Acceptance of this position would in turn lead to the assumption that since the binding agreement continues to bind the parties in terms of the obligations arising from it, it is permissible to amend or terminate it. This possibility would be supported in particular by the freedom of contract, which allows the parties to amend the content of their legal relationship. Such a construction would therefore provide the parties to the binding contract with flexibility in shaping their mutual obligations, given that the contract would still bind the parties in its obligatory layer and would oblige them to conclude a contract with material effects – e.g. after the seller of agricultural real estate has obtained permission to sell it pursuant to Article 2b(3) of the ASAS, if such permission was not obtained before the conclusion of the contract.

However, the above view is not unanimously accepted in the literature. There are many supporters of the position that the invalidity referred to in Article 9(1) of the ASAS applies to the entire juridical act. It is argued that the assumption that the invalidity referred to in the aforementioned article means ineffectiveness only in terms of transfer of ownership leads to dysfunctionality and logical contradictions in the Polish legal system. In fact, it deprives juridical acts of their basic legal significance, undermining the security of legal transactions in an unacceptable manner.<sup>21</sup>

The issue in question has also been the subject of interest in case law, but in relation to analogous regulations adopted at the level of the AREF. The most comprehensive statement in this regard was made by the Supreme Court in its resolution of 20 November 2015, III CZP 80/15.<sup>22</sup> Responding to the legal issue presented by the Court of Appeal in Warszawa in its decision of 2 July 2015: “Does the claim provided for in Article 6(2) of the AREF include a request to declare the invalidity of a specific juridical act or an act of law resulting in the acquisition of real estate by a foreigner, or only to declare the invalidity of the effect of such an act in the form of the acquisition of real estate, regardless of the act that caused this effect?” The Supreme Court stated that the resolution of the legal issue presented requires clarification as to whether the court hearing the action provided for in Article 6(2) of the

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<sup>20</sup> Z. Truszkiewicz, *O kilku podstawowych zagadnieniach...*, p. 36.

<sup>21</sup> T. Czech, *Kształtowanie ustroju...*, Article 9.

<sup>22</sup> Supreme Court resolution of 20 November 2015, III CZP 80/15, LEX no. 1956351.

AREF should rule whether the legal basis for the acquisition of real estate (juridical act, act of law) is invalid, or whether the material effect of the juridical act or act of law is invalid.

According to the Supreme Court, the literal interpretation of Article 6(1) of the AREF, which states that the acquisition of real estate is invalid, supports the position that in the proceedings provided for in Article 6(2) of the AREF, the court declares the transfer of rights to real estate invalid. The legal norm expressed in this provision does not concern either the basis for acquisition or the manner of acquisition (*a contrario* Article 58 § 1 of the Civil Code), but concerns only the effect in the form of acquisition of real estate, regardless of the basis and manner of acquisition. Only by recognising that Article 6(1) of the AREF concerns the effect of a juridical act, i.e. the acquisition of the right to real estate itself, can this norm be more clearly distinguished from the norm resulting from Article 58 § 1 of the Civil Code.

The Supreme Court further argues that the legal doubt submitted to it for resolution is relevant only if the basis for the acquisition of the right to real estate is a juridical act; in such a case, it is possible to consider either the juridical act itself or only one of its effects – the acquisition of the right to real estate – to be absolutely invalid. In this context, it should be emphasised that the AREF is a special act regulating the acquisition of real estate located in Poland by foreigners, which the legislator has subjected to greater state control. The exceptional nature of this act argues for its narrow interpretation, and therefore, since the legislator has decided to subject the acquisition of real estate by foreigners to more intensive control, it cannot be assumed that it intends to control all the effects of acts involving foreigners, and such a conclusion would be reached by an interpretation according to which the entire juridical act would be absolutely invalid. Due to the specific procedure for the acquisition of real estate by foreigners, it always takes place in two stages; the first is the creation of the basis for the acquisition – a juridical act or act of law, and the second is state control, expressed in the issuance of a consent to a foreigner to acquire real estate. The specific regulation contained in the AREF applies only to the second stage, so the lack of a consent means that the right to the real estate is not acquired. This in no way undermines the other effects of the juridical act or act of law underlying the acquisition.

In conclusion, the Supreme Court stated that the claim provided for in Article 6(2) of the AREF is only intended to invalidate the effect of acquiring ownership (perpetual usufruct) of real estate. It therefore clearly favoured the first of the above views. The theses formulated by the Supreme Court in the

aforementioned resolution were also shared in their entirety by the Supreme Court in its resolution of 24 March 2022, III CZP 48/22.<sup>23</sup>

The practical consequences of opting for one or the other of the above views are significant. The issue of the admissibility of a possible amendment or termination of a contract has already been discussed, which, if the first of the above views were accepted, would only have contractual effects due to a breach of the provisions of the ASAFA, but would not be absolutely invalid in its entirety. This issue should also be considered in the context of trading in economic entities or assets, such as an enterprise or an inheritance, which include agricultural real estate. Assuming that a violation of the provisions of the ASAFA entails the invalidity of the acquisition of the real estate itself would allow the disposal of economic entities or assets to remain in force in other respects, without the need to refer to Article 58 § 3 of the Civil Code in each case.

Taking the above into account, one cannot agree with the above-mentioned view that the position assuming the invalidity of only the material effect of the acquisition of agricultural real estate ownership in the event of a breach of the provisions of the ASAFA leads to dysfunctionality and logical contradictions in the Polish legal system, depriving acts of law of their fundamental legal significance. It is not the case that a juridical act that does not produce the aforementioned effect is a “nonsensical category,” constituting a concept devoid of content.<sup>24</sup> The above-mentioned important arguments speak in favour of accepting the aforementioned position, contributing to strengthening the security of legal transactions and limiting the risks involved in adopting the view that the entire juridical act performed in a manner contrary to the provisions of the ASAFA is invalid.

Supporters of the position that, under the ASAFA, the entire juridical act would be invalid put forward an argument based on a literal interpretation of Article 9(2) of the ASAFA, according to which, in addition to persons having a legal interest, the NASC may bring an action for a declaration of invalidity of a juridical act.<sup>25</sup> However, it seems that this view goes too far; the above-mentioned arguments of the Supreme Court, formulated against the background of twin regulations of the AREF, cannot be ignored, in light of which the regulation of both acts is autonomous and should be read in the context of their objectives and nature. Contrary to its literal wording,

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<sup>23</sup> Supreme Court resolution of 24 March 2022, III CZP 48/22, LEX no. 3324927.

<sup>24</sup> T. Czech, *Kształtowanie ustroju...*, Article 9.

<sup>25</sup> *Ibidem*.

Article 9(2) of the ASAF should be interpreted rather as an indication that the invalidity of the acquisition of agricultural real estate may only result from a juridical act performed in a manner inconsistent with the ASAF, and cannot be applied in the event of other acts of law taking effect. The latter issue will be discussed further in this study.

### **3. Invalidity of the acquisition of real estate in the case of acts of law other than juridical acts**

The issue of the significance of the invalidity of the acquisition of real estate referred to in Article 9(1) of the ASAF has caused considerable controversy both in the literature and in case law – in cases where the acquisition of agricultural real estate resulted from an act of law other than a juridical act. The Act of 14 April 2016 on the suspension of the sale of real estate from the Agricultural Property Stock of the State Treasury and on amendments to certain acts introduced a legal definition of the acquisition of agricultural real estate into the Act on the shaping of the agricultural system (Article 2(7) of the ASAF). As indicated above, in the light of this definition, the acquisition of agricultural real estate should be understood as the transfer of ownership of agricultural real estate or the acquisition of ownership of agricultural real estate as a result of a juridical act or a decision of a court or public administration body, or any other act of law. The intention of the legislator at that time was to “tighten up the system” and underline that in order to achieve the regulatory objective of the Act, it is not so much the type of act leading to the acquisition of agricultural real estate that is important, but rather its effect in the form of the purchaser gaining control over such real estate.

The concept of an act of law within the meaning of Article 2(7) of the ASAF should certainly not be identified with the concept of a juridical act which necessarily involves a declaration of will, as is clear from the definition contained in the aforementioned provision. It is a specific fact that is relevant in legal relations, as determined by the applicable legal norms. This concept should therefore also cover court rulings, administrative acts, events that are not actions (e.g. death), tortious acts and unjust enrichment. This view has also been confirmed in the case law of the Supreme Court, which has indicated that an “act of law” is a legal concept broader than a juridical act and also includes the acquisition of a right *ex lege*, e.g. by prescription (i.e. operation of law).<sup>26</sup>

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<sup>26</sup> Supreme Court ruling of 13 March 2014, I CSK 47/13, LEX no. 1467216.

It is worth noting that the doctrine and case law developed in relation to twin regulations in force in the AREF may also be of significance when considering the scope of the concept of “acquisition of agricultural property.” Pursuant to Article 1(4) of the AREF, the acquisition of real estate within the meaning of the Act is the acquisition of ownership or perpetual usufruct rights to real estate on the basis of any act of law. In light of this wording of this legislation, there is no doubt that the obligation for a foreigner to obtain a consent from the Minister of Internal Affairs for the acquisition of real estate (Article 1(1) of the AREF) must be fulfilled – as is in the case of juridical acts – prior to the act (event) the effect of which is the acquisition of real estate. Case law has also been particularly consistent in taking the position that exceptions to this rule that concern acquisition of real estate by a foreigner on the basis of a will and a specific bequest that are events whose occurrence and timing cannot be predicted or planned, and which would justify the admissibility of obtaining *ex post* consent, should not be interpreted broadly and applied to other acts of law.<sup>27</sup> Recently, this thesis has been particularly strongly expressed in the judgment of the Supreme Administrative Court of 22 August 2023, II OSK 2262/22<sup>28</sup> in which the Court stated that the acquisition of real estate by a foreigner as part of a judicial division of joint property between former spouses is not exempt from the obligation to obtain a consent before a common court issues a ruling. However, it is noteworthy that in the aforementioned judgment, the Supreme Administrative Court also stressed that the assessment of the effects of the acquisition of real estate on the basis of a final court ruling, despite the lack of the required consent, is a completely different matter.

The latter issue, in turn, was resolved in the above-mentioned resolution of the Supreme Court of 24 March 2022, III CZP 48/22, the theses of which deserve to be quoted at a greater length. In this resolution, the Supreme Court confirmed that in the light of Article 1(4) of the AREF, the acquisition of real estate within the meaning of this Act concerns any act of law and therefore also acquisition on the basis of a final court ruling in a case concerning the division of joint property. However, this does not mean that the acquisition of a right in this manner, despite the lack of the required consent, leads to its invalidity. The Supreme Court based its position on the observation that the scope of Article 1(4) of the AREF, covering both the legal cause and its

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<sup>27</sup> Supreme Court resolution of 20 November 2015, III CZP 80/15, OSNC 2016, no. 12, item 141; Supreme Court resolution of 25 June 2008, III CZP 53/08, OSNC 2009, no. 7–8, item 98.

<sup>28</sup> Supreme Administrative Court of 22 August 2023, II OSK 2262/22 LEX No. 3599650.

effect, is broader than the meaning of the term “invalidity” in the Polish legal system, which was used by the legislator in Article 6(1) of the AREF. The sanction of invalidity provided for in this provision cannot apply to a court ruling. The opposite view would be contrary to the conceptual framework of Polish civil law, in which the sanction of invalidity applies only to juridical acts and not to other acts of law that do not fall within this category, including court rulings.

Consequently, the Supreme Court stressed that the view that the sanction of invalidity, as understood in this way, applies to the acquisition of real estate on the basis of a court ruling should be firmly rejected. This provision cannot replace systemic solutions and undermine all the effects that an act of law in the form of a final court ruling could have in the legal system. The fact that the legislator decided to subject the acquisition of real estate by foreigners to more intensive control does not mean that it wanted to undermine the principle of the binding force of final court rulings, disrupting the security of legal transactions and leading to fundamental contradictions in the legal system.

The Supreme Court further pointed out that pursuant to Article 365 § 1 of the Code of Civil Procedure a court ruling is binding not only upon the parties and the court that issued it, but also upon other courts and other state and public administration bodies, and in cases provided for by law, also upon other persons. The fact that the provisions of the AREF were not applied when the ruling was issued does not affect its effectiveness and binding force. The possibility of reviewing a final court ruling by means of an action to declare it invalid should be excluded. This would essentially amount to a retrial, the subject of which would be to assess the correctness of the court’s application of the law in a finalised case.

Therefore, if the acquisition of real estate took place on the basis of a court ruling, it becomes part of the purchaser’s assets. Such an acquisition may only be considered invalid if the ruling on which the acquisition is based is removed from legal transactions in accordance with the relevant procedural rules (cassation appeal, extraordinary appeal), provided that there are grounds for this under separate regulations. The Act on the Acquisition of Real Estate by Foreigners does not contain any separate legal mechanisms aimed at removing a ruling that is inconsistent with it from legal transactions. Such a mechanism is not constituted by an action for a declaration of invalidity of the acquisition (Article 6(2) of the AREF) as it does not serve to review a final court ruling. Only such an understanding of Article 6(1) of the AREF gives it a rational normative meaning, ensures its proper functionality and allows it to be reconciled in terms of the system with other legal acts.

It is worth noting that the aforementioned theses resulting from the Supreme Court resolution of 24 March 2022 are an extension of the previously established line of judicial decisions. In the above-mentioned resolution of 20 November 2015, III CZP 80/15,<sup>29</sup> the Supreme Court stressed that if the acquisition of a right to real estate results from an act of law other than a juridical act, it is not possible to consider that act absolutely invalid. This would be a contradiction, because – and this needs to be emphasised – it is the relevant legal norm that links the act in question with the effect of acquiring a right to real estate.

Acceptance of the aforementioned position results in dual legal consequences for violations of the provisions of the AREF, which is intended to ensure state control over the acquisition of real estate by foreigners in the public interest. This is because the legal consequences of defective juridical acts are different from those of other act of law. In the aforementioned resolution of 24 March 2022, III CZP 48/22, the Supreme Court recognised this consequence of its decision. It even noted that it may not be in line with the intention of the legislator, but also that, for systemic reasons, it cannot result in a different solution to this problem.

The above-mentioned position of the judiciary, shaped against the background of the provisions of the AREF, is also consistent with the statements of a significant part of the doctrine. Already in older literature, it was noted that the concept of invalidity of acquisition referred to in Article 6(1) of the AREF can easily be applied to cases of acquisition of ownership by way of contracts (juridical acts), but that it is not so simple in situations where this right is acquired as a result of acts to which the relevant provisions attach such an effect (adverse possession, inheritance). Polish civil law does not recognise the effect of invalidity of the acquisition of a specific right by adverse possession or inheritance. As a result of an act provided for in the regulations, a given entity acquires a right and this effect arises *ex lege* at that very moment.<sup>30</sup>

It should be emphasised that the above view is not unanimously accepted in the literature on the AREF. It is argued that the invalidity of the acquisition of real estate referred to in Article 6(1) of the AREF as existing by operation of law is independent of whether the acquisition takes place on the basis of a contract or, for example, a court ruling. It is sufficient that the acquisition is

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<sup>29</sup> Supreme Court resolution of 20 November 2015, III CZP 80/15, LEX no. 1956351.

<sup>30</sup> J. Kawecka-Pysz, *Nabywanie nieruchomości przez cudzoziemców*, Warszawa 2004, pp. 94–95; Z. Truszkiewicz, *Ustawa o nabywaniu nieruchomości przez cudzoziemców z komentarzem*, Kraków 1996, p. 62.

contrary to the provisions of the Act.<sup>31</sup> However, in the light of the arguments put forward by the Supreme Court in the above-mentioned resolution, this position does not currently deserve approval. In particular, the view that the acquisition of real estate by a foreigner on the basis of an act of law other than a juridical act, in violation of the provisions of the AREF, remains invalid and cannot be validated, and that its invalidity cannot be determined on the basis of Article 6(2) of the AREF. Such a construction is foreign to the Polish legal system, of which the AREF is an integral part.

Referring the above broad considerations concerning the regulations contained in the AREF to the analogous issue in the ASAS, it should be emphasised that the above-mentioned view, which has recently prevailed in the case law of the Supreme Court, fully corresponds to the dominant position regarding the interpretation of the legal norm resulting from Article 9(1) of the ASAS, the wording of which, as indicated above, is very similar to that of Article 6(1) of the AREF. In the opinion of the majority of scholars, the sanction of invalidity under Article 9(1) of the ASAS applies only to acquisitions based on juridical act. This view excludes the application of the sanction of invalidity in relation to act of law other than juridical acts (e.g. administrative decisions, court ruling) and gives Article 9(1) of the ASAS a rational normative meaning, ensuring its proper functionality and allowing it to be reconciled, in terms of the system, with other legislative, in particular the Civil Code.<sup>32</sup>

As indicated in the literature, the use of the sanction of invalidity – characteristic of conventional juridical acts – in relation to other acts of law is a misunderstanding. A breach of the provisions of the ASAS should not affect the validity or binding force of the ruling on the basis of which the agricultural property was acquired. A final court ruling is binding not only on the parties and the court that issued it, but also on other courts and other state and public administration bodies. Similarly, in the case of the acquisition of agricultural real estate contrary to the provisions of the ASAS on the basis of a final administrative decision, it should be considered that the addressee

<sup>31</sup> I. Wereśniak-Masri, *Nabywanie nieruchomości przez cudzoziemców w Polsce. Komentarz*, Warszawa 2024, pp. 112–113.

<sup>32</sup> T. Czech, *Kształtowanie ustroju..., Article 9*; D. Łobos-Kotowska, M. Stańko, *Ustawa..., Article 9*; A.J. Szereda, *Problematyka orzeczenia sądów w ustawie o kształtowaniu ustroju rolnego*, "Krakowski Przegląd Notarialny" 2016, no. 4, p. 113; J. Pisuliński, *O niektórych osobiściach obrotu nieruchomościami rolnymi*, "Rejent" 2016, no. 5, p. 37; K. Czerwińska-Koral, *Zasady obrotu nieruchomościami rolnymi w postępowaniach sądowych po 29.04.2016 r. – wybrane zagadnienia z praktyki sądowej, cz. 2*, "Przegląd Sądowy" 2018, no. 10, pp. 93–94.

of the defective decision is the owner of the property. Nor can one speak of the invalidity of the acquisition of real estate by adverse possession or inheritance.<sup>33</sup>

Acceptance of the above view also requires an appropriate view of the “invalidity” of the acquisition of agricultural real estate through the merger or division of commercial companies – contrary to the provisions of Article 4(1)(4)(b) of the ASAS in conjunction with Article 9(1) of the ASAS. The doctrine points out that the act of law leading to the acquisition of real estate in the cases described is in fact a final court decision on entry in the National Court Register. Such a ruling may only be challenged in extraordinary proceedings – for the resumption of proceedings and a declaration of invalidity of the proceedings, for which, however, certain conditions must be met. It is not possible to challenge a final court decision under Article 9 of the ASAS.<sup>34</sup>

As it appears, in terms of the ASAS, the controversy described above was finally resolved by way of an amendment to it act made by virtue of the Act of 13 July 2023 amending the Act on the Management of Agricultural Property of the State Treasury and certain other acts.<sup>35</sup> Its provisions clearly stipulate that the sanction of invalidity of the acquisition of agricultural real estate, specified in Article 9(1) of the ASAS, is limited exclusively to acquisitions based on juridical acts. This circumstance is also indicated in the explanatory memorandum to the draft act, which states that “the proposed amendment to Article 9(1) stems from the need to harmonise the approaches of various authorities and ensure the consistency of the legal system. The acquisition of ownership of agricultural real estate takes place not only as a result of juridical act undertaken by sellers or buyers of agricultural real estate, but also, for example, on the basis of rulings by courts and public administration bodies. It is precisely in this area that there is a need to eliminate doubts as to whether rulings by courts and public administration body may lead to the invalidity of the acquisition of ownership rights. The invalidity referred to in Article 9 should only apply to juridical acts, and not to court or administrative authority rulings or acts of law. The current wording of Article 9(1) indicates that this applies to all types of real estate acquisition. However, bearing in mind that the provision contained in Article 9(2) according to

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<sup>33</sup> W. Gonet, in: P.A. Blajer, W. Gonet, *Ustawa o kształtowaniu...*, Article 9.

<sup>34</sup> J. Bieluk, *Przekształcenia spółek kapitałowych a ustawa o kształtowaniu ustroju rolnego*, “Przegląd Prawa Rolnego” 2019, no. 2, p. 120.

<sup>35</sup> Act of 13 July 2023 on the Management of Agricultural Property of the State Treasury and certain other acts (Journal of Laws of 2023, item 1933).

which the NASC may bring an action for annulment of a juridical act for the reasons referred to in paragraph 1 only theoretically provides a basis for bringing an action before a court, there is no procedure in the generally applicable procedural regulations for bringing an action before the court for the annulment of court rulings on the basis of which agricultural real estate was acquired in violation of the provisions of the ASAS. The proposed legislative amendment will make it possible to resolve the above problems and eliminate such doubts.”<sup>36</sup> It is nevertheless worth noting that the doubts mentioned in the justification have already been effectively clarified by unambiguous statements in the doctrine.

#### **4. Selected procedural aspects related to declaring the acquisition of real estate invalid under the Act on Shaping the Agricultural System**

Pursuant to Article 9(2) of the ASAS, in addition to persons having a legal interest, the NASC may also bring an action for the invalidation of a legal transaction for the reasons referred to in para. 1. In the context of this regulation, a doubt has arisen in the literature as to whether the action referred to in the provision of this Article is an action for annulment within the meaning of Article 189 of the Code of Civil Procedure,<sup>37</sup> or whether Article 9(2) of the ASAS constitutes an autonomous basis for bringing an action for annulment, abstracting from the conditions specified in Article 189 of the Code of Civil Procedure.<sup>38</sup> However, it seems that despite the above controversies, Article 9(1) of the ASAS does not provide for a specific court procedure under which a civil court would rule on the invalidity of the acquisition of real estate regardless of the manner of acquisition. In particular, as indicated above, this provision does not constitute a basis for reviewing final court judgments by way of an action to declare them invalid. These arguments may also be repeated with regard to administrative decisions. In the case of acquisition of real estate, e.g. on the basis of an administrative decision in violation of the provisions of the ASAS, it is not possible for a court to declare the acquisition of real estate invalid on the basis of Article 9(2) of the ASAS. In such a situation, extraordinary appeal measures provided for in the

<sup>36</sup> Sejm print no. 3429 of 3 July 2023, pp. 27–28.

<sup>37</sup> T. Czech, *Kształtowanie ustroju...*, Article 9; D. Łobos-Kotowska, M. Stańko, *Ustawa...*, Article 9.

<sup>38</sup> J.J. Zięty, A. Kudrzycka-Szypiół, *Charakter prawnny...*, p. 441.

Code of Administrative Procedure remain available, including, in particular, a declaration of invalidity of an administrative decision as containing a defect causing its invalidity by operation of law (Article 156 § 1(7) of the Code of Administrative Procedure).<sup>39</sup>

Taking the above into account, it should be concluded that in accordance with the general principles resulting from Article 189 of the Code of Civil Procedure, a necessary condition for pursuing a claim on this basis is for the claimant to demonstrate that they have a legal interest. The literature indicates that the existence of a legal interest in a claim for a declaratory judgment is evidenced by the possibility of definitively ending the dispute between the parties in those proceedings, while the possibility of the claimant obtaining more complete protection through other legal action argues against its existence. This interest should therefore be understood broadly. The concept should be interpreted taking into account broadly understood access to the court in order to ensure adequate legal protection, which cannot be sought through other legal action.<sup>40</sup> It is also worth emphasising that the standing of the parties in proceedings for a declaratory judgment does not necessarily have to result from an existing legal relationship between them or from the right that is to be the subject of the declaration. This provision does not only introduce the requirement that the legal relationship or right to which the proceedings relate must exist between the claimant and the defendant, but also the condition that one of them must be a party to the legal relationship in question.<sup>41</sup> The claimant is obliged to prove the facts justifying the legal interest referred to in Article 189 of the Code of Civil Procedure. Furthermore, the legal interest must be consistent with the law and the principles of social coexistence, as well as with the purpose served by Article 189 of the Code of Civil Procedure.<sup>42</sup>

In the above context, the significance of Article 9(2) of the ASAS lies in extending the group of entities entitled to bring action under Article 189 of the Code of Civil Procedure. A relevant action may also be brought by the NASC. This entity is therefore not required to demonstrate facts justifying its legal interest. It should be assumed that Article 9(2) of ASAS creates an independent, special legal capacity and standing to sue for the NASC,

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<sup>39</sup> Z. Truszkiewicz, *Ustawa...*, p. 62.

<sup>40</sup> O.M. Piaskowska, *Kodeks postępowania cywilnego. Komentarz. Art. 1–505(39)*, vol. I, LEX 2025, Article 189.

<sup>41</sup> Supreme Court judgment of 31 January 2008, II CSK 378/07, LEX no. 863958.

<sup>42</sup> O.M. Piaskowska, *Kodeks...*, Article 189.

and thus determines that this entity has a legal interest in obtaining a ruling declaring invalidity. This interest is determined by the need to protect the public law sphere. In relation to other entities, however, legal interest should be assessed on general principles.

Market practice shows that most proceedings seeking to declare the acquisition of real estate invalid as contrary to the provisions of the ASAS are initiated by the NASC. An action for a declaratory judgment brought under Article 189 of the Code of Civil Procedure should be directed against the entity which questions the existence of a right, legal relationship or fact of a law-creating nature, or which infringes or asserts its own rights. Therefore, when the parties agree on the invalidity of a juridical act between them, it seems inadmissible to bring an action for a declaratory judgment.<sup>43</sup> A judgment declaring invalidity, like a judgment dismissing an action due to lack of legal interest, has no effect on the existence and scope of the possible invalidity of a juridical act. This is because it is a sanction of substantive civil law, producing an effect by virtue of the law itself. Consequently, there should be no doubt that since a juridical act concluded in violation of the provisions of the ASAS could not lead to the effective acquisition of agricultural real estate, the parties to the transaction themselves may remove the effects of the invalid acquisition of real estate made in violation of the Act in order to avoid a lawsuit filed by the NASC and the related court proceedings. If, pursuant to a contract drawn up in violation of the provisions of the ASAS the purchaser was entered in the land and mortgage register, the removal of the effects of the invalid acquisition of the real estate may, in particular, consist in removing the inconsistency between the legal status of the real estate resulting from the relevant land and mortgage register and the actual legal status by initiating the appropriate land and mortgage register proceedings.

Assuming the above, the practice applied by the NASC, which avoids bringing actions for a declaration of invalidity of the acquisition of agricultural real estate in cases where the parties to the transaction do not question the invalidity of the acquisition and where they have taken action to remove the effects of the invalid acquisition of real estate made in violation of the ASAS, deserves appreciation. Moreover, the NASC, recognising certain violations of the provisions of the ASAS, generally leaves the parties to the juridical act free to choose the means of remedying such violations. It should be noted that the described practice of the NASC is another argument in fa-

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<sup>43</sup> M. Gutowski, *Nieważność..., Legalis.*

vour of the position that, under the ASAS, only the effect of the acquisition of agricultural real estate may be affected by invalidity, and it should not apply to the entire juridical act. If the latter view is accepted, any actions taken by the parties, for example to amend or terminate a contract resulting in the acquisition of real estate concluded in violation of the provisions of the ASAS, would have no justification whatsoever, given the absolute invalidity of the entire contract.

## Conclusion

The considerations presented in this article encourage the formulation of a conclusion about the urgent need for in-depth reflection on the sanction in the event of a breach of the provisions of the ASAS. It is difficult not to notice that the sanction of “invalidity of acquisition” resulting from Article 9(1) of the ASAS has not been formulated in a fully rational manner. In the light of the doctrine and case law, it appears to be insufficient to achieve the public law objectives of the Act. Its practical significance is limited to the acquisition of real estate on the basis of juridical acts (i.e. mainly contracts); as the wording of Article 9(1) of the Act does not justify the creation of an extraordinary system of verification of acts of law other than juridical acts by way of an action to determine their invalidity, which is unknown to the Polish legal system.

Considering the above reservations concerning both theoretical issues and the practical application of the ASAS, it seems reasonable to discuss the advisability of continuing to maintain the sanction of invalidity of real estate acquisition under this Act. On the one hand, it does not ensure the actual effectiveness of its provisions (e.g. in relation to acts of law other than juridical acts), and on the other hand, it raises doubts as to whether the entire juridical act performed in a manner inconsistent with the Act is invalid, or whether invalid is only its effect in the form of the acquisition of agricultural real estate. As indicated above, even the classification of invalidity under the provisions of the ASAS as absolute invalidity may raise doubts.

It therefore seems advisable to seek alternatives to invalidity as the basic sanction in the trade in agricultural real estate. Comparative legal studies should be of particular importance in this respect, as many legal systems are moving away from the sanction of absolute invalidity in the public law regulation of trade in agricultural real estate in favour of other types of instruments. Of fundamental importance in this regard are financial sanctions, or so-called contestability sanctions which grant public administration bodies

the power to demand that the parties to a juridical act terminate it or amend its content accordingly.<sup>44</sup> These sanctions would ensure greater flexibility and effectiveness of public law control over agricultural real estate transactions, while contributing to the reduction of risks that inevitably accompany the widespread use of invalidity sanctions under the ASAS.

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<sup>44</sup> P.A. Blajer, *Public control of share deals in companies owning agricultural real estate in a comparative perspective*, "Przegląd Prawa Rolnego" 2022, no. 2, p. 67.

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