

AUTONOMY OF WILL AND DISPOSAL OF AGRICULTURAL LAND¹

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Abstract

Autonomy of the will is the basic principle of the law governing the matter of contract law. The autonomy of the will is a confirmation of the existence of subjective civil rights, but also a guarantee of the position and role of the will of the individual in the establishment, change and termination of subjective civil rights. This would mean that the contracting parties conclude, change and terminate their contractual relations of their own free will. The widest freedom of contract exists when the object of disposal is private property. However, this freedom is not limitless, but must be within the limits of coercive regulations, public order and good customs, which limits are quite wide depending on the subject of the contract. Certain restrictions exist in the disposal of agricultural land. The paper analyzes the influence of autonomy of will on the disposal of agricultural land in private ownership. On the one hand, agricultural land is an asset of general interest in the Republic of Serbia, and on the other hand, there are general rules of freedom of disposal of private property, but this freedom is limited in specific cases, considering the status of an asset of general interest. Authors believe that the state benefits from goods of general interest and the owner bears the risk. That is why the state should make an additional contribution, by reducing the risk of agricultural land owners with safe subsidies so that both parties benefit.

Key words: *autonomy of will, agricultural land, good of general interest, restrictions on disposal, natural law.*

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Introduction

Regulation of obligation relations in any social system, depending on the nature of the system and the interest that is to be achieved, gives the legislator two possibilities. If it concerns interests and relationships that can only be protected by a specific legal solution and its strict application, the legislator opts for imperative coercive norms, which the contracting parties must respect. But, if the interests and relationships are not such that they need to be protected by an imperative legal norm, then the contracting of the business relationship is completely left to the interested parties (legal vacuum) or is regulated by dispositive norms of the law that only substitute the will of the contracting parties if it is not expressed otherwise in the mutual contract. Therefore, in this case, the primary importance is the will of the contracting parties in relation to the will of the legislator prescribed by laws (Perović, S., 1995). Such norms are mostly contained in the Law on Obligations of the Republic of Serbia (ZOO).

Every legal system in the field of obligations allows the contracting parties a greater possibility to regulate their relations themselves, of their own free will, but always within the limits established by law. The principle of the dispositive nature of the provisions of the law regulating this area is accepted in the modern world as ruling, where the will of the contracting parties, as a rule, has a dominant character. The agreement of the contracting parties on the content of their relationship is the law for the parties that concluded it.

In accordance with that principle, the law of Serbia expressly prescribed that the provisions of that law are complementary in nature. This means that the dispositive legal norms are applied only if the contracting parties, within the permissible limit of autonomy of will, have not determined otherwise (ZOO).

Every legal system allows the freedom of contractual regulation of business relations, but also foresees a limit to which the freedom of the contracting parties can extend. This means that this freedom is never absolute and unconditional, so we can only talk about its broader or narrower frameworks of application. Freedom of contract is opposed by the general rules of the social order, the nature and framework of which depend on the nature and character of the basic principles on which a social system rests (Marković, R., 2014). The principle of freedom to regulate contractual relationships in Serbia is limited by one traditional provision according to which contractual parties in contractual relationships are free to regulate their business relationships in

accordance with their will within the limits of compulsory regulations, public order and good customs (Perović, S., 1995).

When it comes to limiting the freedom of contract, through a generally accepted norm, it can be said that it is a theory of public order, which first appeared and developed in the French doctrine. This theory can be understood as a general theory about the limits of freedom of contract, regardless of the term used to denote that limit in the codes of individual countries (Marković, R., 2014).

In Serbia as well, public order and its protection are in the foreground. Public order can be described as a set of institutions and certain regulations, whose role is primarily to protect the general interest of a society. It is necessary to point out that the institution of public order is of a relative nature and therefore subject to invisible changes in every society, including Serbian society. Namely, on the question, what is public order, different legal systems give different answers, depending on special circumstances and relationships (Gounot, E., 1912). Closely related to the institutions of public order are the rules of business ethics and good behavior.

Finally, the autonomy of the will is also limited in relation to the inviolability of concluded contracts. The courts, recognizing the occurrence of a change of circumstances (*clausula rebus sic stantibus*), allow, in addition to his compensation, the termination of the contract. The injured party is not obliged to remain with the contractual relationship (*pacta sunt servanda*), but may request termination of such contractual relationship.

The problem raised in this paper is the relationship between the state and business entities (legal or natural persons) in the field of agriculture, interested in achieving business goals with their own property, using their property, agricultural land and agricultural products. The goal of every business entity is to use and dispose of its assets in order to gain profit (Penner, J. E., 1997). The goal of the state, as one of the constituents, is also to realize the profit of economic entities so that it, the state, would realize its benefit in a sociological sense from public revenues from the operations of economic entities. In this regard, the owner of the property and/or capital participates in all business results - he receives the realized profit or, unlike all other constituents, he bears the only risk. The fact that the economic results of a business entity's operations are reflected directly in its assets is one of the key levers of entrepreneurship and motivation for investing capital in business: viewed in the relationship between the state

on the one hand and the owners of agricultural land and products as means of labor on the other, there is no socialization losses and participation in profits. Success in business is shared by all constituents, and failure “happens” only to the owner of agricultural land, i.e. capital.

The main goal of this paper is to show the possibilities of well-regulated relations between the state and the owner of agricultural land as goods of general interest and/or agricultural products whose disposal, as well as the free disposal of certain agricultural products, is limited by imperative norms, against the general principle of autonomy of will prescribed by the ZOO.

Methodology

In order to collect and evaluate relevant information, the following methods were used:

- analysis of several cases in practice - agricultural producers in the territory of Srem,
- the synthesis method was used to summarize the conclusions, while giving recommendations for the application of good rules in this area.

The research was conceived as a theoretical-empirical one, which decided to apply basic analytical and synthetic methods in the theoretical part, and in the empirical part, the survey method.

During the preparation of the theoretical part, numerous modern scientific and professional literature, as well as practical experiences, were consulted through the research of foreign and domestic literature that deals with the issues of autonomy of will, property rights and the state as a person interested in the sustainable operation of economic entities and the management of goods of general interest.

The authors conducted a survey in which ten representatives of companies and larger agricultural holdings in the territory of Srem, who have 3 or more employees and have been in business for more than ten years, participated, which implies that they have sufficient knowledge about the activity they are engaged in. The goal of the survey was to determine the position of farmers and processors of agricultural products in the situation of restrictions on the distribution of their property by the state.

All properties that have been reached through research have been classified, in order to point out important connections and relationships, and by the method of comparison, we have learned about the desired goals, ways and directions of cooperation between the owners of goods of general interest and the state.

Bearing in mind the strategic importance of agriculture in the RS and the fact that the relationship between the state and the owner of agricultural land as a good of general interest synergistically connects several components - economic, political, social, legal and environmental issues, the main hypothesis of this work is based on the assumption that the relationship between the state and owners of goods of general interest can be arranged in such a way that they serve to increase the competitiveness of agriculture in the Republic of Serbia and, in particular, to redistribute risks.

Research results

The interest of the property owner of agricultural land

Analyzing data obtained from representatives of companies and larger agricultural holdings in the territory of Srem, it can be concluded that they are not satisfied with compensation from the state in a situation where, due to certain circumstances, it limits the prices of their goods and services. Compensation is not paid in an adequate amount, it is not paid in a timely manner, nor can they affect the amount of compensation. They believe that in such cases the risk of working on their own property is borne only by the owners of the property.

The right to property is considered both a natural and a personal right, guaranteed by the Constitution of the Republic of Serbia and other regulations. Property rights aim to achieve human dignity by ensuring the economic independence of individuals (Paunović, Krivokapić, Krstić, 2018; Kuljić, T., 2016). In order to exercise economic rights, the state has the right to intervene in economic life, protecting the economically weaker from the economically stronger in order to avoid abuses and unwanted consequences of the liberal economy.

When it comes to the autonomy of the will, in recent times the maxim “the individual acts, and the right commands” is increasingly present. This means that, compared to the long history when the autonomy of the will was much more dominant, something is still changing, in terms of the circumstances and the extent of the autonomy of the will. The limitations of the autonomy of the will are numerous and constantly increasing.

It is true that the individual will must necessarily give way to somewhat higher social values that would be in the interest of all, but not to the detriment of the individual, the owner of his own property, but the state is obliged to provide means in order to completely eliminate the risk of the owner of private property (Penner, J. E., 1997). The dogma of absolute independence and independent limitation of the human will will experience new blows and will be increasingly endangered. The opinion that the will is in the service of the law, and not the law in the service of the will (thering), will easily penetrate. The will is also increasingly attributed a social function, and is even considered as an instrument for the realization of a social function.

Every business, regardless of whether it is carried out by a natural or legal person, is only at first glance an idyllic system that has one interest, the interest of the property owner. However, the fact is that every business is full of conflicts and different interests towards the internal and external world (Vasiljević, M., 2013). It is inevitable that there are multiple interests, and certainly the risks of the constituents: the interest of shareholders, creditors, employees, the interest of the management, the company itself, the interest of society in the sociological sense (of the state).

There is no doubt that the main interest of property owners is to secure profits, which, however, in most of the world in the last few decades has been limited by moral aspects. Therefore, it can be concluded that “the interest of business is the totality of all individual interests of all constituents.” In this totality, the interest of the owner of the property (capital) is certainly primary, that is, in the first place, but in any case it is not the only interest.

Agriculture is extremely important for the Republic of Serbia and its citizens. Double requirements are constantly placed before it: it needs to find a way to produce quality food for the population, at the same time to take care of environmental protection, so that the fulfillment of these requirements by persons engaged in agriculture is constantly under scrutiny, users, the public and the state.

The state can implement extraordinary intervention measures in this area for the effective and timely prevention, i.e. elimination of market disturbances caused by a significant increase or decrease in prices on the domestic or foreign markets or other events and circumstances that lead to or threaten to lead to significant disturbances in the market, in order to protection of the living standard of the population. But he cannot implement the mentioned measures to the detriment of the owner of the property, but must compensate him.

In Serbia, the government's measures, such as the one banning the export of flour and wheat, have damaged millers and farmers. It happens that the state, due to the economic crisis and the low standard of living of citizens, passes regulations on limiting the prices of agricultural products or their products to the detriment of producers. That is why those business entities should receive adequate and timely compensation from the state that would provide them with sustainable business, not only so that they would have the interest and motive to produce what is expected of them and thereby fulfill the state's obligation to the citizens, but that the service realistically compensates so that they do not bear the business risk. We need to find a fair solution on compensation for farmers, millers and others in the same position, which will not suffer either the budget or the socially vulnerable categories.

Sustainable business and state responsibility

Globalization, as a process that marked the end of the twentieth century, helped the world to understand how business operations of economic entities affect not only the individual, but also the immediate environment and the global ecosystem. The day we realized that we operate in a global village, we also began to understand the complicated connections between customers, suppliers, local communities, the state, the environment and our own success.

Thanks to the media, and especially the development of the Internet, the planet has become aware of the challenges that stand in the way of its sustainable development and survival. Thus, today, a responsible attitude towards employees, citizens and the environment is demanded not only from governments but also from private companies.

The imperative of sustainable business is not just a question of altruism. It is primarily a question of the physical survival of individuals and companies in a world of limited resources. The adoption of a sustainable business model enables business entities not only to survive in conditions of limited resources and to develop continuously and in the long term (World Business Council for Sustainable Development, 1998), and the state's living income and the performance of its functions that the Constitution mandates.

Therefore, socially responsible business is actually a derivative of sustainable development. The materialization of sustainable development requires a change in behavior patterns in all segments of activity of all economic entities, and above all the state as the creator of behavior on the market, that

is, a fundamental revision and change of values (Drljača, 2012). Therefore, the state is obliged to assume the full risk that it imposes on other economic entities in the performance of its functions.

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Conclusion

A little less than a century ago, scientists correctly concluded that the right to property has changed its legal nature and that property is no longer a right that exclusively serves the interests of the owner. In the exercise of his right, the owner is obliged to take into account the interests of the whole, because the use of private property to the detriment of the whole is prohibited.

It is clear that the right to property has been deprived of its unlimitedness for a long time, primarily for the purpose of protecting the public interest. Due to such a changed understanding, property no longer represents an absolute, unlimited right. There is, however, no general agreement on where the border is that the state must not cross, especially in cases of deprivation or reduction of property rights. The authors believe that in numerous procedures to limit the disposal of the property of farmers and processors of agricultural products, the state crossed the limit of its powers in a negative sense and significantly damaged the rights of persons with inadequate compensation for their risk.

The importance of agriculture for the economy of Serbia, for people and the environment is undoubtedly great. The state should provide a safer environment for agricultural production and more intensive development of the agricultural sector.

Considering the obligation of socially responsible behavior in all, including in this case, all business entities, and especially the state, which should be an example of respecting the rules of social responsibility and morality, the authors came to the conclusion that the state must show much more conscientiousness and fairness in cases before above all, limiting the rights of the agricultural producer related to the disposal of their product, but also fair compensation up to the assumption of full risk.

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