



Office International du Coin de Terre et des Jardins Familiaux a.s.b.l.

Regroupement des fédérations européennes des jardins familiaux
association sans but lucratif

Madam
Viviane REDING
Vice-president of the European Commission
Commissioner for Justice, Fundamental
Rights and Citizenship
200, rue de la Loi

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Luxembourg, le 21st January 2013

Conc.: Existence of allotment gardens threatened in Poland
v. réf.:
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Madam Vice-President,

On behalf of the *Office International du Coin de Terre et des Jardins Familiaux a.s.b.l.* which associates national allotment federations from 15 European countries, we kindly ask you Madam Vice-President to monitor the issue of respecting the legal personality of the *Polski Związek Działkowców* (PZD)—the Polish Association of Allotment Gardeners—which is a member of our Organization since 1999.

The PZD is a Polish organization currently associating nearly one million allotment gardeners. It was founded in 1981 by an act of the *Sejm* (Polish Parliament), that united in this organization all the allotment gardeners from the allotment sites functioning at that time in Poland. On 8th July 2005 the *Sejm* passed a new law concerning family allotment gardens, which has become the new legal basis for the PZD. It should be noted that the Polish Constitution allows the possibility to create such organizations by a law passed by the *Sejm*. The Polish Hunting Association (*Polski Związek Łowiecki*) is such an example.

On 12th July 2012 the Polish Constitutional Court made a judgment which annulled a large part of the 2005 law. The major part of this judgment shall enter into force on 21st January 2014. The Constitutional Court stated that the PZD had a monopolistic position in

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running allotment gardens, but also that the PZD's rights to the garden land overly limit the State and the municipalities, who are the owners of the sites occupied by allotment gardens.

Among the contested provisions, the Constitutional Court mainly annulled the provisions which are the legal basis for the functioning of the PZD. In effect, the Court pointed out that the Polish legislature should adopt new provisions until 21st January 2014. Otherwise the PZD will cease to legally exist.

Therefore, this judgment *de facto* means that - without the interference of the *Sejm* - we will witness a forced dissolution of one of the largest associations of citizens, not only in Poland, but also in Europe. This situation raises legitimate controversy. First, there is a lack of any axiological rationale for such a drastic interference of the State in the freedom of association of allotment gardeners. Secondly, in accordance with the Polish law, the Constitutional Court does not have the power to dissolve associations, which, however, will be the direct effect of the judgment. Thirdly and finally, this judgment annuls the provisions which are the basis for the legal personality of the PZD, so the consequence will be the expiration of all of the rights to the allotment land, including the rights held by the individual gardeners.

It should be mentioned that the judgment of the Constitutional Court was not passed unanimously. Dissenting opinions were submitted by two of the Judges. In these opinions the Judges indicated, *inter alia*, their doubts concerning the admissibility of dissolving an association as a result of a Constitutional Court judgment, as well as the lack of consideration by the Court of the need to respect the property rights of the allotment gardeners and their association. It was also indicated that although the PZD had a privileged position compared to the other allotment organizations, it was not a monopolist as the Court had concluded. To this end it should also be pointed out that several other allotment associations participated in the proceedings before the Court, which is the best evidence that there is no monopoly of the PZD.

Madam Vice-President,

In accordance with the Polish law the judgments of the Constitutional Court are final so there is no right of appeal. PZD has prepared an application to the Court of Human Rights, however, the chances that a ruling by this court will be made before 21st January, 2014 are very slim. In addition, the Polish Parliament is preparing to debate on the new law concerning allotment gardens. Already, however, the first drafts indicate that there is a strong tendency to liquidate the PZD.

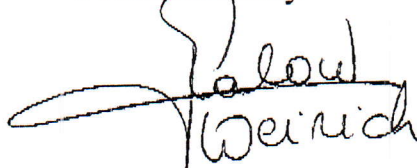
Incoming information indicate that the ruling party (*Platforma Obywatelska*), which is a member of the Christian Democratic fraction in the European Parliament, also intends to submit a draft attempting to liquidate the PZD, nationalize its property and drastically weaken the legal situation of the individual gardeners by depriving them of their rights acquired on the basis of a parliamentary act.

Given the political situation in the *Sejm*, it is realistic that an act will be adopted that will severely violate the standards of a democratic state of law. A violation of the autonomy of an association of citizens by the State, the discrimination of a vast social group (allotment gardeners), whose property rights acquired on the basis of the law are to be expired, as well as the nationalization (without due compensation) of a non-governmental organization's property - are just some of the actual effects of the solutions proposed by the parliamentarians to the Polish allotment community.

The allotment gardeners in Poland have drafted a citizen's act that meets the guidelines set forth by the Constitutional Court, without violating the rights of the citizens or their association. Unfortunately, despite several hundred thousand signatures supporting this act, the above mentioned initiative has not become the subject of a serious debate on the part of the public authorities. This situation is perceived by the allotment gardeners as an indication of the intention to impose unfavorable solutions onto their families.

Therefore, we kindly ask you Madam Vice-President to consider the possibility of taking up this matter by the European Commission with the Government of Poland. We think that there is a real danger that a Member State of the EU may undertake actions towards a member of our Organization and citizens associated in its ranks, which would be a violation of the rights guaranteed by article 6 of the Treaty of the European Union.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Malou Weirich', with a large, sweeping flourish extending to the left.

Malou WEIRICH
Secretary general