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Csilla CSÁK* – Zsófia HORNYÁK** – Flóra OROSZ***
The farm model based on constitutional value****

Abstract

The social farm, which also has a history of more than a decade in Hungary, cannot be called a new operating model. In its content elements, it combines the system of agricultural activity, social aspects and environmental values in a novel approach. The system of connection points creates the essence and novelty of social farms. The presentation and analysis of the constitutional foundations of each pillar highlights the values that strengthen the identity of social farms.
Keywords: sustainability, social farm, disadvantaged people, natural resources.

1. Introduction

In Hungarian parlance, the farm system primarily means an agricultural model based on family farming. Within the framework of this study, the farm model is used in a different sense, it represents an activity framework based on agricultural activity, that combines the essential elements of social economy and multifunctional agriculture with the incorporation of a new conceptual element, which can be defined as social farm service. Through their activities, social farms combine social and environmental protection aspects, thus increasing social and economic usefulness and efficiency.

2. The essence of the social farm

There are several determinations of the term and definition of social farm in Europe. Within the framework of this study, we consider the Hungarian name and content definition as the starting point. Accordingly, the definition of the social farm, which was created by a group of experts in 2015: *"A form of cooperative farming that operates in accordance with social and solidarity principles and in order to promote social and environmental awareness, which carries out agricultural production, processing and service activities involving disadvantaged people; respectively, it carries out awareness-raising additional activities related to*

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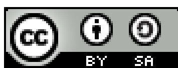

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agriculture for a wider circle of society."[1] The functional element of the operation of the social farm is provided by the fact that people with disabilities and with reduced capacity to work carry out various agricultural and agricultural supplementary activities within its framework, which activities typically assume an atypical employment[2] relationship.[3] In addition to the classical forms of employment, the employment here can be considered a new type of social innovation[4] employment[5] solution[6] based on agricultural activities,[7] the purpose of which is strongly social,[8] that is, the integration of disadvantaged persons through agricultural activities.[9]

The essence of the social farm model is related to agricultural activities, environmentally friendly and sustainable activities and values related to the countryside,[10] embracing and employing[11] disadvantaged people, the root and basis of which can be traced back to constitutional values. These characteristics of the social farm, resulting from its multifunctional nature, social and ecological function, are linked to the regulatory subjects of agricultural and environmental protection and ensuring equal opportunities. This study draws attention to the constitutional regulatory subjects which, in our opinion, establish the operation of social farms, as well as their significance through the constitutional values they represent. Namely, among the regulatory subjects of environmental protection, we highlight the regulatory subjects that ensure the protection of natural resources, physical and mental health and the right to the environment, as well as the related sustainable development. Among the agricultural regulatory subjects, we mention the provision relating to the agricultural holding, the provisions relating to

[1] The concept was formulated by the working group set up in the framework of the project "Establishment of Social Farms in Hungary NCTA-2014-8221-C". See Jakubinyi 2015, 28.
[2] For details on atypical employment in agriculture, see Prugberger 2021, 5–19.
[3] For details on the employment of disadvantaged people, see Csák & Kenderes 2016, 141–152.
[4] For more on social innovation, see Bozsik, Szemán & Olajos 2020, 3–19.
[5] Csák 2018, 12.
[6] In addition to employment within the framework of the social farm model, this also includes public employment, employment by social cooperatives and start social cooperatives.
[7] This is confirmed by the opinion of the European Economic and Social Committee (EESC) in 2012, which states in point 1.1 that "*Social agriculture is an innovative approach that combines two concepts: multifunctional agriculture on the one hand and social services and health care at local level on the other. In the context of agricultural production, it contributes to the well-being and social inclusion of people with special needs."* See European Economic and Social Committee: *Social agriculture: „green care", social and health politics* (own initiative opinion), NAT/539CES1236-2012_00_00_TRA_CA (EN), Brussels, 12 December 2012 (hereinafter: EESC Opinion 2012).
[8] It is important to note that we are not talking about social employment, as it has not existed in Hungary since 1 April 2017. In terms of its purpose, we are talking about a social form of employment in the case of social farms.
[9] Many people often confuse the concept of the social farm model with the social cooperative and identify the services provided on social farms with the employment offered by the social cooperative. However, these two concepts must be separated from each other, they are not synonymous with each other. For employment in individual types of Hungarian cooperatives, see Orosz & Hornyák 2018, 232–238.
[10] On the constitutional interpretation of the countryside, see Szilágyi 2019, 451–470.
[11] On social responsibility in agriculture, see Csák & Hornyák 2016, 49–60.

agriculture free of genetically modified organisms in the case of agricultural foodstuffs,[12] and the provisions relating to natural resources closely linked to the agricultural regulatory subjects, including specifically the provisions relating to agricultural land.[13] Among the regulatory subjects related to equal opportunities, we mention social security, equal treatment and the right to work. In order to examine certain regulatory subjects, it is necessary to examine the 'provisions' of the National Creed,[14] which can be regarded as the preamble of the Fundamental Law, and also several articles of the Fundamental Law.

However, within the framework of this study, only the environmental and agricultural regulatory subjects will be examined in relation to the topic. However, the aim of the publication is not to provide a complete, in-depth analysis of these regulatory subjects, it only focuses on highlighting the constitutional provisions that, in our opinion, are relevant to the operation of social farms.

3. Environmental regulatory subjects

The right to the environment and the protection of the environment are important parts of the constitutional value system, which also forms a kind of basis for the protection of other values, such as the protection of natural resources, health, and the interests of the future generation.[15]

The question of the protection of natural resources is considered a special subject of regulation, because it cannot be considered to belong only to the scope of environmental protection, it goes beyond that, since we are dealing with a subject of regulation closely related to agricultural law. This stems from the fact that environmental protection and agriculture are related areas and have mutual effect on each other's regulatory areas and protected legal subjects (e.g. nature conservation, biological diversity, etc.)[16] In Article P) of the Fundamental Law, which contains the protection of natural resources, this duality is partially separated. While paragraph (1) contains provision related to both environmental protection and agricultural law, paragraph (2) is purely related to the field of agricultural law. Aware of this dual classification, the provisions belonging to the environmental protection regulatory subjects are analysed here, while the provisions relating to agricultural law are analysed under the agricultural law regulatory subjects.

The social farm model uses the positive aspects provided by nature and natural resources to integrate and employ the target group. The Fundamental Law attaches great importance to the protection of the environment and natural resources. It already appears in the National Creed, and is considered a constitutionally protected value pursuant to

[12] For product labelling of agricultural products, see Hornyák, Olajos & Szilágyi 2015, 826–836.
[13] Regarding the limited use of agricultural land, see Hornyák 2015, 289–299.
[14] András Patyi draws attention to the fact that naming the texts that make up the National Creed is problematic. The question arises whether the turn, thesis, declaration, principle, declaration of values or provision would be the correct designation? For more on this, see Patyi 2019, 9–10.
[15] Fodor 2015, 103.
[16] For details on the connection between environmental law and agricultural law, see Horváth 2007, 333–355.

paragraph (1) of Article P), and also appears in Article 38. According to paragraph 7 of the National Creed *"We pledge to treasure and preserve […] the man-made and natural values of the Carpathian Basin. […]; we shall therefore strive to use […] natural resources prudently so as to protect the living conditions of future generations."* The provisions that are also included in the National Creed predict their special importance for us. As a result, according to András Jakab, the protection of natural resources declares a value system, namely an environmental value system, according to which our existing natural values must be protected and preserved.[17] Furthermore, János Ede Szilágyi also noted that these provisions cannot be regarded as purely symbolic steps, as they can contribute to the interpretation of other sections of the Fundamental Law.[18] Paragraph (3) of Article R) of the Fundamental Law states that certain provisions of the Fundamental Law, including Articles P) and 38, must be interpreted in accordance with the National Creed. The category of natural resources is further defined in paragraph (1) of Article P) as the common heritage of the nation, which expresses Hungary's commitment to the protection of our natural values, in order to preserve them and pass them on to future generations.[19] The constitution defines tasks related to natural resources within the framework of task triad, such as protection, maintenance and preservation. With this provision, environmental protection is expanded, on the one hand, with maintenance, which can be interpreted as the maintenance of the previous level of protection, or as the joint interpretation of environmental protection and sustainability, and on the other hand, with preservation, which means taking responsibility for posterity.[20] All of these constitutional obligations also provide an absolute standard of content, which is not only the obligation of the Hungarian state, but of everyone,[21] that means, of all people, and even of all legal entities (including legal persons and legal entities without legal personality).[22] However, Article P)[23] does not give a clear answer, as it does not exhaustively list the natural values to be protected, it does not give a full delimitation, see the phrase 'in particular'.[24] Furthermore, in connection with the protection of biological

[17] Jakab 2011, 180.
[18] Szilágyi 2017, 28–35.
[19] Decision of the Constitutional Court 28/2017. (X.25.) [35]
[20] Decision of the Constitutional Court 16/2015. (VI.5.) Justification, Imre Juhász's parallel justification [152]
[21] The Decision of the Constitutional Court 28/2017. (X.25.) [30] points out that this obligation cannot be entirely the same for each entity. Natural and legal persons, in addition to knowing and complying with the legal provisions in force, cannot be expected in a coercive way to adapt their behavior to an abstract goal not specified by the legislator, the State can be expected to lay down clearly the obligations which both the State and private individuals must observe.
[22] Decision of the Constitutional Court 16/2015. (VI.5.) [92]; Decision of the Constitutional Court 13/2018. (IX.4.) [13]
[23] For the analysis of Article P) see T. Kovács & Téglási 2019, 173–175.; Hegyes & Varga 2020, 104–117.
[24] It should be noted that for a more precise definition, we need to refer to our Environmental Protection Act, Act LIII of 1995, the scope of which also covers natural resources in § 4. point 3. According to this, with the exception of the artificial environment, all environmental elements or their individual components that can be used to satisfy social needs are to be classified here. Environmental elements are defined in § 4 point 1 as land, air, water, living organisms, the man-

diversity[25] mentioned in this circle, it is not clear whether it belongs to the natural resources or forms a separate, independent category from it. We agree with János Ede Szilágyi, who, following Canon's interpretation, sees biological diversity as part of the category of natural resources.[26] Article 38 specifically mentions the preservation of natural resources as one of the objectives of the protection of national assets. The aim of the constitution was to protect the finite natural resources as the part of the national assets.[27]

Among the objectives of the social farm is the improvement and/or preservation and development of the well-being, mental and physical condition of the target group. The right to health is enshrined in Article XX of the Fundamental Law, paragraph (1) of which guarantees everyone's right to physical and mental health. It is a fundamental right[28] that *"protects the physical and mental integrity of the individual, and as such serves to preserve human health"*.[29] This provision makes an indirect link between environmental protection and health, thus interpreting environmental protection as an instrument of preserving health.[30]

One of the most important conditions for physical and mental health is a healthy environment. The right to a healthy environment is also a specific fundamental right[31] that belongs to everyone – it can be considered one of the most important constitutional rights – which is equal to other fundamental rights, but takes priority over provisions that are considered state objectives and tasks. The Fundamental Law provides this right in Article XXI paragraph (1) – identical to the provision in § 18 of the former Constitution. It does not have a subjective side, that is, according to the Constitutional Court, *"the objective, institutional protection side is predominant and decisive."*[32] Accordingly, the

made built environment and its components. Compared to the Fundamental Law, the Act provides a broader definition. In addition, § 3 of the Environmental Protection Act provides an even more detailed list of what natural resources include, but according to János Ede Szilágyi, this is not a complete list either, as it does not include, for example, genetic engineering

[25] The Constitutional Court has assessed the designation of biodiversity (Decision of the Constitutional Court 28/2017 (X.25.) [35]) as a constitutional value in the Hungarian legal system, which the legislator must take into account when drafting regulations within the scope of certain sectoral policies.

[26] Szilágyi 2018a, 291.

[27] Based on the justification attached to Article 38 of the Fundamental Law.

[28] The right to physical and mental health is included in the Freedom and Responsibility section of the Fundamental Law, which section can be interpreted as a catalogue of fundamental rights and duties, and this right is a fundamental right.

[29] Decision of the Constitutional Court 3132/2013. (VII.2.) [61]. The same provision was confirmed by the Decision of the Constitutional Court 3075/2017. (IV.18.) [25] also.

[30] Bándi 2020, 15.

[31] The fundamental nature of the right to the environment analyzes by Varga 2014, 184–187. The analysis shows that the right to the environment is a part of the objective, institutional protection aspect of the right to life, according to the Decision of the Constitutional Court 28/1994 (V.4.), and provides the physical conditions for its realisation. It is not a subjective fundamental right, but a specific, so-called third-generation fundamental right, the enforcement of which must be guaranteed by the State.

[32] Decision of the Constitutional Court 28/1994. (V.20.) Part III. Point 3.

guarantees of environmental protection are determined by the State[33] along a general (objective) aim, i.e. in order to protect the natural foundations of life, because it would be impossible to satisfy subjective needs.[34] Although the subjective side is missing, the Fundamental Law, like the Constitution, provides who is entitled to the right to the environment: everyone, i.e. every natural person, regardless of nationality, place of residence or stay.[35] The means of enforcing the right to the environment is legislation (resulting from the State's obligation), that is, the legislator must create legislation that ensures the constitutional value of this right, and to create the legal framework for the reasonable management of natural resources.[36]

Finally, when examining environmental regulatory issues, we cannot overlook the issue of sustainability, which is also linked to the characteristics of social farms. Because both the protection of natural resources and the right to the environment are inextricably linked to sustainability and sustainable development.[37] In the words of Gyula Bándi, *"Environmental protection is at the center of sustainable development"*.[38] Although expressis verbis the National Creed does not include the requirement of sustainability, it can be clearly deduced from paragraph 7: within the framework of sustainable development, Hungary is committed to protecting the natural and built environment of the Carpathian Basin; and in addition to the careful use of our material, intellectual and natural resources, which embodies the economic, social and environmental[39] dimensions of sustainability.[40] Thus, it can be inferred from the provision of the National Creed that Hungary is committed to sustainable development.[41] Several articles of the Fundamental Law are also relevant – Articles N), P) and Q), Article XVII, Article 38 – of which, in relation to social farms and environmental regulatory subjects, Article P) should be highlighted, which provides for the maintenance of natural resources (among the task triad of natural resources). At the same time, regarding the issue of sustainability, the Constitutional Court has not yet expressed its in-depth position,[42] which would serve as a guide to the precise interpretation and content of the constitutional provisions concerned.[43] The requirement of sustainability also plays an important role in the case of social farms, because the aim of the farms is sustainable operation.

[33] This was stated in the Decision of the Constitutional Court 996/G/1990.
[34] Fodor 2007, 7–9.
[35] Fodor 2007, 9.; Fodor 2015, 106.
[36] Fodor 2007, 10.; Fodor 2015, 107.
[37] For a detailed analysis of sustainable development, see Bándi 2013a, 11–30.; Bándi 2013b, 67–92.; Bándi 2016, 7–25.
[38] Bándi 2013c, 1120.
[39] For environmental sustainability, see Csák & Nagy 2020, 38–46.
[40] T. Kovács & Téglási 2019, 167., 171.; Baranyai & Csernus 2018, 80–82.
[41] Decision of the Constitutional Court 16/2015. (VI.5.) [146]. Based on Imre Juhász's parallel justification.
[42] This is also indicated by Imre Juhász in his dissenting opinion attached to the Decision of the Constitutional Court 16/2015 (VI.5.) [143–145].
[43] Bándi 2016, 24.

4. Agricultural regulatory subjects

In the Fundamental Law, the constitutionalist placed the assessment of agriculture on a different basis compared to the previous Constitution, expanding it with numerous provisions,[44] thus emphasizing the importance of agriculture and the subjects of agricultural regulation. In the operation of the social farm model, plant cultivation and livestock farming, the processing of raw materials into finished products, rural tourism and the agricultural utilization of the land have fundamental importance, in other words, carrying out agricultural activities is one of the basic pillars of the farm's operation. Consequently, it is essential to examine the constitutionality of the agricultural regulatory subjects relating to the social farm.

Examining the form of operation of social farms entails the question of whether it can be considered an agricultural holding or not – we will not go into the analysis of this in detail, in this study the constitutional aspect of this will be explained. The constitutional provision related to agricultural holdings was included in connection with the third amendment of the Fundamental Law – which only affected article P) with the insertion of paragraph (2) – which expanded the circle of cardinal acts. As a result, Article P) paragraph (2) of the Fundamental Law establishes that the rules for agricultural holdings must also be defined in a cardinal act, which legislative obligation has not yet been fulfilled by the Parliament. In any case, this provision, which also defines the agricultural holding as a regulatory subject of a cardinal act, embodies a higher level of state protection. The term agricultural holding is currently defined in Act CXXII of 2013 on Transactions in Agricultural and Forestry Land (hereinafter referred to as the 'Land Transaction Act', LTA), according to which agricultural holding shall mean the basic organization unit of production equipment and other means of agricultural production (land, agricultural equipment, other assets) operated with the same objective, functioning also as a basic economic unit by way of economic cohesion.[45] In this context, it should be mentioned that paragraph (2) basically provides for adoption of a cardinal act in relation to three regulatory areas: firstly, in the case of agricultural holdings, secondly, in the case of the acquisition of ownership of agricultural land and forests and the limits and conditions for their use, and thirdly, in the case of integrated agricultural production organisation and family farms, the regulation of which is contained in Act CXXIII of 2020 on family farms, adopted in 2020.

Social farms use agricultural land to carry out certain agricultural activities, so it is inevitable to discuss the constitutional provisions relating to land. When examining Article P) from an agricultural law perspective, it is useful to take into account the category of natural resources analyzed for environmental protection regulatory subjects, which, although not included in the scope of agricultural regulatory subjects, is still directly linked to them. Article P) paragraph (1) of the Fundamental Law lists natural resources illustrative, with special reference to the protection of land,[46] which refers to

[44] For the regulation of agricultural regulatory subjects in the Fundamental Law, see Hojnyák 2019, 60–65, 72–75.
[45] Land Transaction Act § 5 Point 20.
[46] For details on the constitutional protection of agricultural land, see Orosz 2018, 178–191.

its prominent place[47] among natural resources. This was already expressed in 1941 by Károly Ihrig, who described land as the nation's most valuable treasure, saying that *"land is a national treasure"*.[48] Also, constitutional judge Ágnes Czine names agricultural land as a special constitutional interest, a natural resource under special protection.[49] In our view, this level of constitutional protection of agricultural land is a real expression of its significance and the importance of its protection. We find all this necessary, because on the one hand, the protection of the land is essential in the case of a country where agriculture plays an important role in the economy, considering the limited amount of land and its limited availability; on the other hand, in Hungary, agricultural and forestry land represents a rather large percentage of the total national assets (about 26%). By virtue of paragraph (2), the State also fulfils its constitutional obligation of protection under paragraph (1) by enacting a cardinal act. As a result, the Land Transaction Act and Act CCXII of 2013 on certain related provisions and transitional rules were created (hereinafter: Act on Land; AoL).[50]

Article P) is closely related to Article 38, paragraph (1) of which provides that "*the property of the Hungarian State and of municipal governments shall be considered national assets.*"[51] Although this article does not specifically mention the term of agricultural land, it has still great importance in relation to the regulation of agricultural land. State-owned land constitutes a slice of national assets, to which the conservation of natural resources, including (arable) land, is referred in the objectives for the management and protection of national assets set out in paragraph (1).

Finally, among the subjects of agricultural regulation, should mention also the Article XX, paragraph (2) of which embodies the institutional protection side[52] of the fundamental right, providing for several new instruments compared to the previous Constitution. These include ensuring access to healthy food[53] and drinking water[54],[55] agriculture free of genetically modified organisms (GMO-free), and – as a not new provision – specifically ensuring the protection of the environment. The GMO exemption was added to the provisions of the Fundamental Law as a result of amendment T/2627/159. According to the explanatory memorandum of the motion, more than 70% of the harmful effects on life processes enter the body through food and

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[47] Bobvos et al. 2016, 32.
[48] Ihrig 1941, 241.
[49] Dissenting Opinion of Ágnes Czine, Judge of the Constitutional Court, to the Decision of the Constitutional Court 27/2017 (X.25.) [106].
[50] The AoL is partly a cardinal act, certain provisions of which are considered cardinal on the basis of Article P (2) of the Fundamental Law and certain provisions of which are considered cardinal on the basis of Article 38 (1) of the Fundamental Law. AoL § 107.
[51] National property is regulated by Act CXCVI of 2011 (hereinafter referred to as the National Property Act), § 1 Section (2) of which defines the elements belonging to national property. Act LXXXVII of 2010 on the National Land Fund implements the provisions of the National Property Act relating to state-owned land, specifying the manner and conditions of its management and use.
[52] Decision of the Constitutional Court 3132/2013. (VII. 2.) [58]
[53] On the right to food, see T. Kovács 2017a, 70–114.
[54] On the right to drinking water, see Szilágyi 2018b, 259–272.
[55] Regarding the protection of food and drinking water, see Fodor 2015, 111–112.

drinking water, therefore one of the most important conditions for preserving health is – in addition to the ones listed –, residue-free, healthy, safe, naturally produced (i.e. GMO-free) food and clean drinking water. Finally, the constitutionalist defined the GMO exemption in a narrower sense, in relation to agriculture, which should not be equated with the disappearance of GM food.[56] In addition to preserving health, GMO-free agriculture also aims to protect nature, and to preserve biological diversity by avoiding genetic modification.[57] Although the Fundamental Law does not clarify the nature of the provision on GMO-free status, it can be considered more of an orientational provision,[58] we agree with Endre Tanka, who argues that regulating the issue at the level of legislation is a necessary but not sufficient guarantee, and therefore it is important to enshrine it in the Fundamental Law.[59] Consequently, the Constitutional Court has the task of interpreting the provision and recognising the right to adequate quality food, but has not yet interpreted the phrase *"agriculture free of genetically modified organisms"* of Article XX paragraph (2), which complicates the situation.[60] However, social farms are engaged in GMO-free, organic plant production, and the resulting plants are sold as raw material or processed, or they use them for their own. Another added value is the fact that these plants and finished products are typically the work of people with disabilities and with reduced capacity to work.

5. Closing thoughts

The operating model of social farms is oriented in accordance with the principles and values laid down in the Fundamental Law, which can be considered a specific form of activity, serving social inclusion and sustainability together. This model can be seen as a bottom-up model, which was not formed and developed as a result of legal regulation, but was created and developed into a complex system from a societal, social perspective. However, in the case of bottom-up forms of activity that respond to socio-economic needs, the existing legal regulation does not always create the opportunity for uninterrupted operation. This can also be established in the case of social farms. In the course of operation, legal regulation hinders and does not help or support this activity. In Europe, there are states where the legal regulation has adapted to this form and they operate under a separate legal framework. In Hungary, the existence of social farms is indisputable too, and there are continuous efforts in terms of legal regulation, in order to make social farms more efficient, and forms of support are also available for this activity. Further amendments to the legal regulation are necessary. Land ownership and land use options, the rethinking of the definition of agricultural activity or, for example, the question of using and marketing home-grown products also require consideration in relation to the activity elements.

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[56] Based on the commentary to Article XX of the Fundamental Law.
[57] Fodor 2015, 112.
[58] Szilágyi 2021, 228–229.
[59] Tanka 2005, 37–49.
[60] On the interpretation of the GMO exemption, see Téglásiné 2014, 300–319.; Téglásiné 2017b, 147–164.; Szilágyi, Raisz & Kocsis 2017, 167–175.; Raisz & Szilágyi 2021.

On the basis of the constructive suggestions of the persons engaged in social farm activities, the revision of the legal regulation has also begun in Hungary.

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Attila DUDÁS*

The rules on foreigners' right to acquire ownership of agricultural land in Slovenian, Croatian and Serbian law **

Abstract

The paper gives an overview of the rules on the acquisition of ownership of agricultural land by foreigners in Slovenia, Croatia and Serbia. Slovenia and Croatia initiated their accession to the European Union at different times and under different conditions, while Serbia is not yet a member state of the Union, but has been a candidate country for several years, and the harmonization of its national law with the acquis communautaire has been under way for some time. These circumstances determine the right of foreigners, in particular natural persons and legal entities from the European Union, to acquire ownership of agricultural land in these countries.
In Slovenia non-EU natural persons and legal entities cannot acquire ownership of agricultural land. In contrast, Slovenia opened its real estate market rather early to EU citizens and legal entities. Only the Association Agreement provided for a transitional period of four years during which they could not acquire ownership of agricultural land. From 2003 onwards, citizens and legal entities from the EU are entitled to acquire land ownership without restriction. The Accession Treaty prescribed no moratorium.
Similarly to Slovenia, non-EU natural persons and legal entities may not acquire ownership of agricultural land in Croatia either. The Accession Treaty provided for a seven-year moratorium on the acquisition of ownership of agricultural land by EU citizens and legal entities. The primary moratorium expired on 30 June 2020. However, the EU Commission approved an extension of the moratorium for another three years. Thus, EU citizens and legal entities are still unable to acquire ownership of agricultural land until 30 June 2023.
Foreigners' right to acquire ownership of agricultural land is in general excluded in Serbian law as well. The Stabilization and Association Agreement from 2008 provided for the liberalization of the real estate and land markets for EU citizens and legal entities. However, in 2017 the Serbian legislature amended the Act on Agricultural Land only few days before the expiry of the moratorium on ownership included in the Stabilization and Association Agreement. Nominally, the amendments were intended to introduce explicit regulation on the right of EU citizens and legal entities to acquire ownership of agricultural land, as required by the Stabilization and Association Agreement. However, instead of extending the same conditions applicable to the domestic natural persons and legal entities to those from the EU, the legislator specified additional set of conditions applicable only to the latter. It, in fact, excludes legal entities from the right to acquire property, as they cannot be registered family farmers, and makes the right of natural persons subject to conditions that effectively exclude their acquisition of ownership by 1 September 2027 due to the calculation of deadlines.
Keywords: acquisition of agricultural land, foreigner's right to acquire ownership of agricultural land, Serbia, Croatia, Slovenia.

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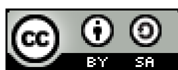
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1. Introductory remarks

The acquisition of ownership of agricultural land has become an important issue in CEE countries after the change of regime from socialist to market economy.[1] This paper concentrates on the rules on acquisition of ownership of agricultural land in Slovenian, Croatian and Serbian law. The analysis is limited to the rules of acquisition by inter vivos transactions. Similar agricultural property, such as forest management areas, vineyards or fisheries are not the subject of the present study. The study focuses on the personal restrictions of the acquisition of agricultural land, specifically on the right of foreign natural persons and legal entities to acquire property. The study does not cover the right of foreign persons to use agricultural land on other legal bases (e.g. under a lease agreement).

2. Slovenia

In Slovenia, the general legal frame of the acquisition of property of agricultural land by inter vivos transactions or mortis causa consists of the 2002 Property Law Code [*Stvarnopravni zakonik*], the 2001 Code of Obligations [*Obligacijski zakonik*] and the 1976 Inheritance Act [*Zakon o dedovanju*].[2] In addition, there are special laws pertaining to arable land and forests relying on this general regulation. These are the 1996 Agricultural Land Act [*Zakon o kmetijskih zemljiščih*], the 1993 Forest Act [*Zakon o gozdovih*], the 1995 Act on the Inheritance of Agricultural Holdings [*Zakon o dedovanju kmetijskih gospodarstev*] and the 1993 Act on the Farmland and Forest Fund of the Republic of Slovenia [*Zakon o Skladu kmetijskih zemljišč in gozdov Republike Slovenije*].[3]

The Slovenian regulation of agricultural land, regarding the right of foreign persons to acquire property, has undergone a long development. Slovenia's first constitution in 1991, enacted shortly after it gained independence, excluded foreigners from the acquisition of land. It expressly stated that foreigners could acquire real estate under the special conditions specified by law.[4]

However, the Constitution provided for an exception to this rule, according to which foreigners may not acquire ownership of agricultural land, except on the basis of inheritance, but even in this case under the requirement of reciprocity.[5] This clearly restrictive rule, i.e. the inclusion of a ban on the acquisition of property by foreigners in the text of the Constitution, was considered in the literature as a rather rare normative solution in comparative constitutional law, which was adopted in fear that the Slovenian farmland would be otherwise rapidly sold out to foreigners.[6] The further development of

[1] For Poland see Zombory 2021, 174–190.; Kubaj 2020, 118–132. For Bulgaria see Georgiev & Grozdanova 2020, 66–84. For Ukraine see Buletsa 2020, 23–50. For Romania see: Veress 2021, 155–173. For Hungary see. Csák & Szilágyi, 2013, 215–233; Hornyák 2021, 86–99; Hornyák 2018, 107–131; Jakab & Szilágyi 2013, 39–57; Szilágyi et al. 2019, 40–50.
[2] Avsec, 2021, 24.
[3] Avsec 2021, 26. old.
[4] Slovenian Constitution, Art. 68. Sec 1. (in the wording from 1991).
[5] Slovenian Constitution, Art. 68. Sec 2. (in the wording from 1991).
[6] Grad et al. 2002, 264. Source: Avsec 2015, 176.

the rules on the right of foreign persons to acquire ownership of agricultural land in Slovenia was determined by the process of accession to the European Union.

In 1993 Slovenia, shortly after it gained independence, began its process of accession to the European Union, then the European Community, by the conclusion of the Cooperation Agreement. However, the Cooperation Agreement did not contain rules on the acquisition of real estate by EU citizens.

In 1996, Slovenia concluded an Association Agreement with the European Community and its Member States. The chapter on the free movement of capital in the Association Agreement contained provisions of a rather general nature. It provided that, during four years following its entry into force, the Parties would take measures to create the conditions necessary for the progressive implementation of EU rules on the free movement of capital.[7] The Agreement further envisaged that, by the end of the fourth year following its entry into force, the Association Council examines how the full application of the Community rules on the free movement of capital can be achieved.[8]

To this end, in a letter representing Annex XIII to the Association Agreement, the Slovenian Government reaffirmed its commitment to take measures to enforce the provisions of the Agreement on the free movement of capital by the end of the fourth year after its entry into force. In addition, the Slovenian Government undertook to allow nationals of EU Member States who have lived in the territory of the Republic of Slovenia for at least three years to acquire real estate, on the condition of reciprocity, from the date of entry into force of the Association Agreement.

However, prior to the ratification of the Association Agreement, the Slovenian Government initiated a constitutional review of the provisions of the Agreement on the acquisition of real estate by persons who are citizens or nationals of EU Member States. The Constitutional Court delivered its decision in 1998, by which it terminated the proceedings because it had become devoid of purpose.[9] In the meantime, namely, the Slovenian Parliament amended the provision of the Constitution concerning the right of foreigners to acquire real estate.[10] According to the rule amended in 1997, foreigners may, subject to reciprocity, acquire ownership of real estate if specified by a statute or an international treaty ratified by the National Assembly.

The enactment of such statute or the ratification of such international treaty required a qualified majority of at least two-thirds of the votes of all members of the National Assembly.[11] The 1997 constitutional amendment abolished the distinction between arable land and other real estate. Following the amendment of the Constitution, the Association Agreement was enacted, and in 1999 the Parliament passed the Reciprocity Act [*Zakon o ugotavljanju vzajemnosti*]. The Association Agreement finally entered into force on 1 February 1999, so that the acquisition of the right of ownership by persons who are nationals of a Member State of the European Union is to take effect from that date.

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[7] Association Agreement, Art. 64. Sec. 1.
[8] Association Agreement, Art. 64. Sec. 2.
[9] The Decision of the Constitutional Court No. U-I-197/97.
[10] 1997 Act of Constitutional Force Amending Art. 68 of the Constitution.
[11] Slovenian Constitution, Art. 68, after the 1997 amendments.

The Association Agreement was followed in 2003 by the Accession Treaty. However, the Accession Treaty also required a constitutional amendment. On the one hand, the constitutional frame had to be created for the delegation of certain competencies constituting state sovereignty in the competence of the EU legislator. To this end, the 2003 constitutional amendment[12] stipulated that Slovenia may decide, by a two-thirds majority of all members of the National Assembly, to transfer the exercise of its sovereign rights to an international organization based on respect for human and fundamental rights, democracy and the rule of law, or enter into a defence alliance with states promoting such values.

The amendment to the Constitution also affected the acquisition of property by foreigners, so Section 68 of the Constitution was amended for the second time. Pursuant to the 2003 amendment, which is still in force, foreigners may acquire real estate on the basis of a statute or an international treaty enacted by the National Assembly. Thus, a provision has been removed from the article of the Constitution on the acquisition of real estate by foreigners, which stipulated that the indicated law and the international treaty must be adopted or enacted by a two-thirds majority of all members of the Parliament.

Slovenia did not prescribe a transitional period in the Accession Treaty during which the right of EU citizens to acquire real estate would be excluded or restricted. This means that from the entry into force of the Accession Treaty, individuals and legal entities from other EU Member States may acquire real estate under the same conditions as domestic citizens. From 1 January 2007, Romanian and Bulgarian citizens and legal entities became entitled to acquire ownership of real estate under the same conditions as domestic natural and legal persons, while Croatian citizens and legal entities from 1 July 2013.

Foreign individuals and legal persons not having the nationality of any member state of the EU may acquire real estate in Slovenia in accordance with the Reciprocity Act, unless a multilateral or bilateral international treaty envisages less stringent conditions. Under a special law[13], individuals and legal entities from EU candidate countries receive more favourable treatment. In their case, the precondition for the acquisition of real estate is that the reciprocity with their country is established by a decision of the competent authority, in accordance with the Reciprocity Act.[14] Citizens of other countries may not acquire real estate on the basis of inter vivos transactions at all, while on the basis of inheritance only if reciprocity exists.

3. Croatia

In Croatian law, the general legal frame of acquisition of real estate by inter vivos transactions or mortis causa comprises the 1996 Property Law Act [*Zakon o vlasništvu i drugim stvarnim pravima*], the 2005 Act on Obligations [*Zakon o obveznim odnosima*] and the 2003 Inheritance Act [*Zakon o nasljeđivanju*]. A special law, the 2018 Act on Agricultural

[12] 2003 Act of Constitutional Force.
[13] 2006 Act on the Conditions of the Right of Individuals and Legal Entities from EU Candidate Countries to Acquire Ownership of Real Estate.
[14] Art. 4.

Land [*Zakon o poljoprivrednom zemljištu*] contains specific rules on transactions concerning agricultural land.

The Croatian Constitution [*Ustav Republike Hrvatske*] expressly states that arable land is of fundamental importance and therefore enjoys special protection of the Republic of Croatia.[15] It also specifies that the manner and conditions of the use and utilisation of goods of fundamental importance to the Republic of Croatia will be determined by law.[16] These provisions form the constitutional legal basis for the special rules contained in the Act on Agricultural Land. This means, among others, that special rules on the acquisition of property of real estate, deviating from the general rules, can be established only by statute.[17]

According to the general rules of the Property Law Act, real estate can be acquired on the basis of a legal transaction, inheritance, court decision, decision of another competent body or statutory rule.[18] Foreign natural and legal persons may, under the condition of reciprocity, acquire ownership of real estate by inheritance.[19] On the basis of a legal transaction, a foreign natural person or legal entity may acquire ownership of real estate with the approval of the Minister of Justice.[20] These restrictions imposed by the Property Law Act relating to foreigners do not, in principle, apply to nationals of other Member States of the European Union.[21] However, the equal standing of EU citizens and legal entities in terms of acquisition of real estate with domestic natural and legal persons does not apply to agricultural land and protected natural areas specified in a special statutes.[22] The provisions of the Act on Agricultural Land is therefore applicable to the right of foreigners to acquire ownership of agricultural land. The effective Act on Agricultural Land, in accordance with the relevant provisions of the Constitution, expressly declares that the Republic of Croatia has a special interest in agricultural land and therefore enjoys a higher level of legal protection.[23] Consequently, the Act excludes the right of foreign natural and legal persons to acquire property of agricultural Land.[24] Such general prohibition exists in Croatian regulation since 1993.[25] According to the effective Law, however, foreigners may exceptionally acquire ownership of agricultural land if provided by international treaty or special statute.[26] The mentioned restriction does not apply to the acquisition of property by inheritance, the only condition for which is reciprocity.[27]

[15] Constitution, Art. 52. Sec. 1.
[16] Constitution, Art. 52. Sec. 2.
[17] Josipović 2021, 105.
[18] Property Law Act, Art. 114. Sec. 1.
[19] Property Law Act, Art. 356. Sec. 1.
[20] Property Law Act, Art. 356. Sec. 2.
[21] Property Law Act, Art. 358. Sec. 1.
[22] Property Law Act, Art. 358. Sec. 2.
[23] Act on Agricultural Land, Art. 2. Sec. 1.
[24] Act on Agricultural Land, Art. 2. Sec. 2.
[25] Kontrec 2014, 75.
[26] Act on Agricultural Land, Art. 2. Sec. 2.
[27] Act on Agricultural Land, Art. 2. Sec. 3.

The general exclusion of foreigners from acquiring land ownership has significantly lost its edge in Croatia in 2001 by the conclusion of the Stabilization and Association Agreement with the European Communities, ratified by the Croatian Parliament in 2001[28] and entered into force on 1 February 2005.[29] The provisions of the Agreement on the freedom of establishment, freedom of financial transactions and free movement of capital mandated the duty of Croatia to make the legal standing of EU citizens and legal entities in relation to acquisition of real estate equal to the right of domestic natural and legal persons.[30] In the Agreement, Croatia undertook to enable legal entities from the EUR to acquire ownership on equal footing with domestic legal entities, but only in relation to real estate required to performe their economic activities, except for natural resources, arable land, forests and forest land.[31] It also undertook to phase out the moratorium on acquisitions within four years from the entry into force of the Agreement.[32]

In the context of the free movement of capital, the Agreement anvisaged for a similar four-year moratorium on the acquisition of land: Croatia undertook to gradually align the right to acquire property of EU citizens and legal entities with that of domestic citizens and legal entities during this four-year period.[33] Firstly, the ministerial approval procedure for the acquisition of real estate by foreigners was somewhat simplified in 2006. Afterwards in 2008, following the amendments to the Property Law Act, individuals and legal entities from the EU became entitled to acquire ownership of real estate under the same conditions as domestic ones.[34] However, this relaxation of the conditions did not apply to the acquisition of agricultural land. The Act on Agricultural Land in force at the time excluded all foreign natural persons and legal entities from acquiring ownership of agricultural land, regardless of whether they had the nationality of any member state of the EU.[35] Consequently, the issue of land acquisition continued to play a central role in the accession negotiations with the Union.

The 2012 Accession Treaty, thus, envisaged that Croatia may maintain a moratorium on the acquisition of land by EU citizens and legal entities for a period of seven years from the date of the accession (1 July 2013).[36] The moratorium on the acquisition of property meant that Croatia was entitled to maintain for seven years its national legislation restricting the acquisition of land by EU nationals being in force at the time of signing the Accession Treaty, but it was not allowed to adopt any new discriminatory rules.[37] Furthermore, it is important to keep in mind that the seven-year moratorium applies to the acquisition of land, in the context of the free movement of capital, within the meaning of Article 63 of the Treaty on the Functioning of the European Union. It does not affect the free movement of persons or their freedom of

[28] Official Gazette - International, No. 14/2001.
[29] Official Gazette - International, No. 1/2005.
[30] Josipović 2021, 109.
[31] Stabilisation and Association Agreement, Art. 49. Sec 5. p. b).
[32] Ibid.
[33] Stabilisation and Association Agreement, Art. 60. Sec. 2.
[34] Josipović 2021, 110.
[35] Josipović 2021, 111.
[36] Accession Treaty, Annex V., point 3., The free movement of capital.
[37] Josipović 2021, 112.

establishment. Thus, if a natural person who is not a citizen of Croatia, but a citizen of another EU Member State, wishes to establish him/herself in Croatia and engage in agricultural activity there, (s)he is not subject to any restrictions on the acquisition of land.[38] The Accession Treaty entitles the Commission of the European Union to extend the moratorium for a further three years if it considers that the lifting of restrictions would cause serious disturbances on the land market.[39] At the request of Croatia, on 20 June 2020 the Commission extended the transitional period for a further period of three years, i.e. until 30 June 2023, during which restrictions on the acquisition of land by individuals and legal entities from the EU may remain in force.[40] In the decision, the Commission pointed out that an average producer in Croatia conducts agricultural activities on 30% smaller land, has a livestock of half as much, has a 56% lower production output than an average producer in the other Member States of the European Union, and the general productivity rate of the agricultural sector in Croatia is 70.2% lower than the EU average.[41]

4. Serbia

The general rules of acquiring ownership of real estate based on inter vivos transactions and mortis causa are contained in the Act on the Fundaments of Property Law Relations [*Zakon o osnovama stvarnopravnih odnosa*], Act on Obligations [*Zakon o obligacionim odnosima*] and the Act on Inheritance [*Zakon o nasleđivanju*]. The special regulatory frame for the acquisition and use of agricultural land can be found in the Act on Agricultural Land [*Zakon o poljoprivrednom zemljištu*] and the Act on Agriculture and Rural Development [*Zakon o poljoprivredi i ruralnom razvoju*].

The main rules on the acquisition of property by foreigners are contained in the Act on the Fundaments of Proprietary Legal Relations. Pursuant to this Act, foreign natural persons or legal entities may, on the condition of reciprocity, acquire ownership of real estate necessary for the performance of their activities in Serbia.[42] A foreign natural person who does not carry out activities in the territory of Serbia may, under the condition of reciprocity, acquire ownership only of a flat or residential building.[43] In contrast to this general regulation, special rules apply to the acquisition of ownership of agricultural land. The Serbian Constitution does not qualify explicitly agricultural land as an asset of national importance and does not provide for special restrictions on the circulation and use of privately owned agricultural land.[44] Restrictions relating to the acquisition of ownership of arable land should therefore be sought at the legislative level. The Act on Agricultural Land prescribes explicitly that a foreign natural person or legal entity may not own land unless entitled by the same Act or by the Stabilization and

[38] Ibid.
[39] Accession Treaty, Annex V, point 3, The free movement of capital.
[40] The Decision of the Commission of the European Union No. (EU) 2020/787.
[41] Points 6. and 7. of the Decision.
[42] Act on the Fundaments of Proprietary Legal Relations, Art. 82a Sec. 1.
[43] Act on the Fundaments of Proprietary Legal Relations, Art. 82a Sec. 2.
[44] Constitution, Art. 88. Sec. 1.

Association Agreement.[45] Negotiations relating to the Stabilization and Association Agreement with the Union started already in 2005. The Agreement was signed in 2008 and entered into force on 1 September 2013. Article 63 (2) obliges Serbiato allow, upon the entry into force of the Agreement, nationals of the Member States of the European Union to acquire ownership of real estate in Serbia, subject to the relevant procedures. The Agreement obliges Serbia to amend progressively its existing legislation within four years of the entry into force of the Agreement in order to provide EU citizens the same position as domestic nationals with regard to the acquisition of property of real estate.

The four-year period expired on 1 September 2017. However, on 28 August, that is only few days before the expiry of the deadline, the General Assembly adopted in emergency procedure an amendment to the Act on Agricultural Land, which entered into force on 31 August (the regular vacatio legis is 8 days) and its application started[46] as of 1 September 2017.[47] The amendment introduced a new section 72đ into the text of the Act. It stipulates explicitly the conditions under which an individual or legal entity from the EU may acquire ownership of agricultural land. The rules only apply to the acquisition of property on the basis of legal transaction, both onerous and gratuitous.[48]

The conditions of acquiring ownership are as follows:[49] (1) the EU citizen has resided for at least 10 years in the territory of the municipality where the agricultural land to be acquired is located; (2) has been cultivated the agricultural land which is the subject of the acquisition for at least three years on the basis of onerous or gratuitous legal transaction; (3) has a registered family farm in Serbia for at least 10 years without interruption, in which (s)he qualifies as a family farmer in accordance with the Law on Agriculture and Rural Development; (4) possesses machinery and equipment necessary for the performance of agricultural activity.

Privately owned agricultural land may be acquired under the mentioned conditions indicated if it: (1) is not classified as a building plot by a special statute; (2) is not considered a protected natural resource; or (3) does not qualify as a military facility or as a buffer zone around a military facility.[50]

In addition, the law stipulates that the subject of the acquisition of property may not be agricultural land located within a 10 km zone from the borders of the Republic of Serbia.[51] However, this restriction does not apply to arable land on which private ownership has been restored by the application of statutes pertaining to restitution and became object of legal transactions afterwards.[52]

[45] Act on Agricultural Land, Art. 1. Sec. 4.
[46] In Serbian law the date of entry into force and the date of the commencement of the application of a regulation quite offer diverge.
[47] On the 2017 amendments of the Act on Agricultural Land see in more detail Baturan & Dudás 2019, 63–71.; Dudás 2021, 59–73.
[48] Act on Agricultural Land, Art. 72đ Sec. 1.
[49] Act on Agricultural Land, Art. 72đ Sec. 2.
[50] Act on Agricultural Land, Art. 72đ Sec. 3.
[51] Act on Agricultural Land, Art. 72đ Sec. 4.
[52] Act on Agricultural Land, Art. 72đ Sec. 7.

Even under these conditions, a citizen of a Member State of the European Union may acquire ownership of agricultural land only up to 2 hectares.[53] Compliance with the indicated conditions is determined by the Ministry of Agriculture.[54]

The Act stipulates that all three deadlines shall be calculated from the entry into force of the law.[55] This means that an EU citizen can, theoretically, acquire ownership of agricultural land in Serbia in 2027 at the earliest. In addition, the Republic of Serbia has a pre-emptive right. The right of pre-emption is exercised by the Government on the proposal of a committee the members of which are the minister of agriculture and the minister of finance. The minister of agriculture and the minister of finance determine jointly the conditions, time limit, manner and procedure of the exercise of the pre-emption right.[56] Finally, the Act prescribes expressly that the transaction shall be considered null if the parties have not complied with the conditions for the acquisition of ownership of privately owned land.[57]

5. Concluding remarks

Of the three countries that have been compared in this paper, Slovenia and Croatia initiated their accession to the European Union at different times and under different conditions. Serbia is not yet a member state of the Union, but has been a candidate country for several years, and the harmonization of its national law with the *acquis communautaire* has been under way for some time. These circumstances determine the right of foreigners, in particular natural persons and legal entities from the European Union, to acquire ownership of agricultural land in these countries. Within the frame of the regulation on foreigners to acquire real estate in general, the study specifically examined the rules for the acquisition of ownership of agricultural land.

Slovenia does not envisage different regulations for real estate and agricultural land. Uniform rules for the acquisition of real estate are quite strict for non-EU natural persons and legal entities. In fact, they cannot acquire ownership of agricultural land, except for natural persons and legal entities from EU candidate countries. However, Slovenia opened its real estate market rather early to EU citizens and legal entities with EU citizenship. Only the Association Agreement envisaged a transitional period of four years during which they could not acquire ownership of agricultural land. From 2003 onwards, citizens and legal entities from the EU are entitled to acquire land ownership without restriction. The Accession Treaty prescribed no moratorium.

Unlike Slovenia, there are different rules in Croatia regarding the right of foreigners to acquire real estate and agricultural land. The Croatian Constitution qualifies arable land as an object of major national importance. Non-EU natural persons and legal entities may not acquire ownership of agricultural land. The Accession Treaty specified a seven-year moratorium on the acquisition of ownership of agricultural land by EU citizens and legal entities. The moratorium was also a key issue in the negotiations for the

[53] Act on Agricultural Land, Art. 72đ Sec. 5.
[54] Act on Agricultural Land, Art. 72đ Sec. 6.
[55] Act on Agricultural Land, Art. 72đ Sec. 8.
[56] Act on Agricultural Land, Art. 72đ Sec. 9-12.
[57] Act on Agricultural Land, Art. 72đ Sec. 13.

new Member States that joined the EU in 2004. Of the six new Member States that joined the EU at the time, the accession treaty prescribed a seven-year moratorium for six Member States (Czech Republic, Estonia, Lithuania, Latvia, Hungary and Slovakia) and a 12-year moratorium for Poland.[58] The moratorium was also seven years for Romania and Bulgaria, which joined the EU only few years later.[59] In the case of Croatia, the primary moratorium expired on 30 June 2020. However, according to the Accession Treaty, at the reasoned request of the Croatian government, the EU Commission may approve the maintenance of the moratorium for another three years. This has been requested by the Croatian Government and approved by the Commission. Thus, EU citizens and legal entities are still unable to acquire ownership of agricultural land until 30 June 2023.

The Serbian regulation is similar to Croatian, but differs from Slovenian, since foreigners can acquire ownership of agricultural land and other real estate under different conditions. The provision of Serbian law excluding foreigners' right to acquire ownership of agricultural land, unless envisaged in the Act on Agricultural Land or in the Stabilization and Association Agreement, can also be paralleled with Croatian legislation. Serbia is in a rather special position in terms of the regulation of EU citizens' and legal entities' right to acquire ownership of agricultural land. Although the Stabilization and Association Agreement with the European Union was concluded in 2008, which provided for the liberalization of the real estate and land markets for EU citizens and legal entities, the fact that Serbia is not yet a member of the Union provides a certain degree of regulatory freedom. Using it, the Serbian legislature amended the Act on Agricultural Land only a few days before the expiry of the moratorium on ownership included in the Stabilization and Association Agreement. Nominally, the amendments were intended to introduce an explicit regulation on the right of EU citizens and legal entities to acquire ownership of agricultural land, as required by the Stabilization and Association Agreement. However, instead of extending the same conditions applicable to the domestic natural persons and legal entities to those from the EU, the legislator specified additional set of conditions applicable only to the latter. It, in fact, excludes legal entities from the right to acquire property, as they cannot be registered family farmers, and makes the right of natural persons subject to conditions that effectively exclude their acquisition of ownership by 1 September 2027 due to application of the statutory deadlines. Serbia is not yet a member of the European Union, but the compliance of these rules with the Stabilization and Association Agreement can be scrutinised. The 2017 amendments to the Law on Agricultural Land are not in line with the Stabilization and Association Agreement. The current regulation should, however, be considered rather as a necessary transitional legal frame in which the acceding state can make preparations for the openining of its land market the citizens and legal entities from the EU.[60]

[58] Nikolić Popadić 2020, 217.
[59] Nikolić Popadić 2020, 219.
[60] Nikolić Popadić 2020, 228.

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Zoltán József FAZAKAS*

The Romanian Agrarian Reform Following World War I – a tool for building the nation-state**

Abstract

After the First World War, Romania's territory increased, and it inherited a complex social, economic and legal environment which differed from that of the predecessor states. The Romanian state's response to these challenges remained unchanged, this being the political goal of building a homogeneous nation-state. It was an element of this goal that the State implemented a radical agrarian reform through various land reform laws with partial effect. This agrarian reform had genuine social challenges at its core however from the moment of its inception, to that of its implementation, it was imbued with Romanian nationalism. The reform achieved its national objectives, but its social results are questionable. The actions of the Romanian state thus created domestic as well as international disputes. This paper summarizes the constitutional basis and the lessons that this process hides.
Keywords: constitution, nationalism, nation-state, agrarian reform.

1. Introductory remarks

In the complex relationship between reality and facts, legal constructions of reality give rise to legal institutions in which facts have legal relevance and effect when the legislator's choice of values – social, political or otherwise – actually results in law and is applied as such.[1] The legislator's choice of values and its position in the hierarchy of sources of law is of fundamental importance for social relations in all areas of law.

Such a question of value choice arose after World War I, when, as a result of the increase in territory and population following Romania's victory in the War, the social relations of the previously homogeneous nation-state changed decisively. The territories acquired by the Romanian state, previously have never been under a single government, and the different social conditions of regions with different levels of economic development made the Romanian state the home of particularistic rights.[2] These circumstances presupposed, by default, an integration policy on the part of Romania that could successfully resolve the differences inherited from the predecessor states. Despite all these circumstances, Romania left intact its unitary nation-state foundations, briefly

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[1] Szabó 2005, 225., 240–242., 272–274.
[2] Eliescu 1936, 167–169.

outlined below, and from then on the goal of a homogeneous Greater Romania was pursued within the new state borders.

One of the most significant elements of the nation-state program and constitutional value choice in all branches of law was the agrarian reform implemented in the post-World War I period. The contradiction between the declared legal policy goal of the substantive land reform and the realized state policy goal highlights the distortions of the constitutional state resulting from the constitutional value choice. While the declared aim of the agrarian reform was to make social relations more just, the actual aim was to cumber the property rights of national and religious minorities as a tool for building the nation-state.

2. The main elements of the constitutional choice of values and the substantive legislative environment

2.1. Constitutional and social foundations of Romania until the First World War

Without going into a detailed social sciences-based analysis focusing on nationalism, as an initial observation it can be stated that in the case of Romania, the centralized nation-state is the decisive constitutional starting point. The interpretation of the nation-state has remained essentially unchanged since the Romanian Constitution of 1866, and consequently Romanian legislation has not only been (and still is) subject to its decisive limits,[3] but has also been (and still is) subordinated to it.

The Romanian national awakening of the 18th and 19th centuries as a result of modern nationalism, soon worked out the irredentist nation-state program of 1838,[4] which aimed at uniting all Romanians in one state. This goal became more and more consistent starting with 1848[5] and became the primary state policy objective. A decisive element in the achievement of this state-political goal was the process of the unification of the two principalities of Wallachia and Moldova into a single state, the final stage of which was the election of Alexandru Ioan Cuza as Prince of Moldova in Iași between 5 and 17 January 1859 and as Prince of Wallachia in Bucharest between 24 January and 5 February 1859. The United Principalities of Moldavia and Wallachia[6] was established by way of a personal union and then a real union, which in 1862 took up the name Romania.

The newly established Romanian state modernized and unified its legal system at an accelerated pace, essentially by transposing French and Italian models.[7] Modernization was in many cases formal and, as a result, it suffered serious distortions.[8] Before the new state had achieved full independence, it promulgated its first Constitution on 12 July 1866,[9] which was based on the Belgian Constitution of 7 February 1831.[10] In

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[3] Murzea and Matefi, 2015, 243.
[4] Bíró 2002, 22.
[5] Moldován 2011, 21–24.; Murzea & Matefi 2015, 134–142.
[6] Murzea & Matefi, 2015, 150–152.
[7] Murzea & Matefi, 2015, 143–179.
[8] Horváth 1999, 109–110.
[9] The Romanian Constitution of 1866 (*Constituția României din 1866*).
[10] Murzea & Matefi, 2015, 92.

line with the social realities of the time, Article 1 of the Romanian Constitution of 1866 established the unitary and indivisible state,[11] provisions which have constitutional significance to this day. Romania, which gained its independence following the Treaty of Berlin in 1878,[12] first indirectly, than officially starting from 1913, declared its irredentist goal of unification of all Romanians in a single state.[13] At the heart of Romanian irredentism lay the thesis that all Romanians should be united in a homogeneous nation-state, in the modernized Kingdom of Romania,[14] based on the legal fiction that the lands of the Wallachia, Moldavia and Transylvania were in fact Romanian states.[15]

The Constitution of 1866 formally described the state organization of a modern constitutional monarchy,[16] and accordingly included the rights of the Romanians on the basis of equality of rights and individual rights.[17] The Constitution of 1866 did not define the Romanians as a political community, a fact which was a direct consequence of the mono-ethnic state. The nation-state's choice of values was in line with the social reality, but it should be stressed that exercising rights as a consequence of citizenship was also understood as being linked to the quality of being a Romanian, which was understood as having moral obligations towards the Romanian nation.[18] The elusive content of these moral obligations already at that time foreshadowed the subsequent difficulties, problems of interpretation and distortions arising from this choice of values.

There was a wide gap between the modern legal environment and reality. During this period, Romania was facing serious economic and social crises, which could also be traced back to the formal, but not the substantive, application of constitutionalism. Irredentism, and later the war, proved to be the perfect political tools for covering up the causes of these crises and to postpone the solutions.[19]

The most serious social crisis in Romania during this period was clearly caused by the unresolved agrarian question. Two-thirds of the country's population were farmers, but the risks of agricultural production, the disproportionate and inefficient structure of land ownership and the unsustainable economic structure caused a series of social disasters.[20]

The socially disruptive circumstances culminated in an armed rebellion in 1907, which highlighted the untenable situation of the agrarian masses, who had sunk into poverty, and which also gave way to rampant anti-Semitism and nationalism.[21] The political elite put down the rebellion, but did not eliminate its causes. Romania did not

[11] Alexianu 1926, 118–119.
[12] Teodorescu 1929, 105.
[13] Murzea & Matefi 2015, 134–142.; Moldován 2011, 21–24.
[14] L. Balogh 2020, 9–10.
[15] Boia 1999, 14–28.
[16] Völgyesi 2003, 367–368.
[17] Dissescu 1915, 430., 440–614.
[18] Dissescu 1915, 619., 622–623.
[19] Durandin 1998, 173–200.
[20] Durandin 1998, 174–175, 178–181.
[21] Durandin 1998, 181–183.

take any real steps to resolve the agrarian question, apart from a few sham measures,[22] but continued to pursue the state's primary goal of irredentism.

At the outbreak of World War I, the Romanian state goal of partial or total assertion constituted a tangible possibility, through the prism of the first success which occurred a year earlier in the Second Balkan War. The Romanian public mood was thus already proclaiming the hope of a new Romanian era.[23] The new Romanian era, the goal of the irredentist state, was to be achieved in stages with the collapse of the Central Powers in the autumn of 1918 and the peace treaties ending the War which sanctioned this result.[24]

The events of autumn 1918 created, in addition to the Romanian irredentist state goal, a multi-ethnic Romania with different economic, social and legal situations. Romania, based on the nation-state ideal and irredentism, successfully used the agents of nationalism to achieve its state goal by the end of 1918, but the change in the homogeneous nation-state structure of the country in principle put its leaders in front of a constitutional choice of values.

2.2. The impact of World War I on the Romanian constitutional order

Romania actually did not respond to this situation with a new choice of values. The Romanian state and its political elite, learning from the disintegration of Austria-Hungary,[25] consistently refrained from changing the fundamental position of the unitary nation-state, which thus remained, despite the changed social reality.

However, unlike Romania, the Allied and Associated Powers recognized the challenges of a state that had become a multi-ethnic state and the basic elements of the response to this challenge were laid down in the Treaty of Paris for the Protection of signed with Romania on 9 December 1919 Minorities (hereinafter referred to as the Paris Treaty for the Protection of Minorities) as part of the Paris Peace Treaty.[26] Romania vehemently opposed the conclusion of the treaty, which it considered to be a serious violation of the equality and sovereignty of states.[27] Romania stressed that the obligations contained in the treaty had already been granted as substantive rights to its minorities without any specific commitment, and that its conclusion was therefore superfluous.[28] These arguments were not accepted by the Allied and Associated Powers, which effectively issued an ultimatum to the Romanian government.[29] Despite the ultimatum nature of the Paris Treaty for the Protection of Minorities, the Romanian state lacked the

[22] Durandin 1998, 183–184.
[23] Dissescu 1915, 293.
[24] Teodorescu 1929, 102.
[25] Brătianu 1922, 27–28.
[26] Ratified through Law no. 3699. – Lege Nr. 3699. prin care guvernul este autorizat a ratifica şi a face să se execute tratatul de pace împreună cu anexele lui, încheiat de Puterile Aliate şi Asociate cu Austria, în Saint Germain, la 10 septembrie 1919, şi Tratatul asupra minorităţilor semnat la Paris la 9 decembrie 1919.
[27] Sofronie 1936, 30-38.
[28] Gaftoescu 1939, 134–137.; Nagy 1944, 22.
[29] Tilea 1926, 210–213.

genuine will to accept the provisions of the treaty and to actually guarantee the rights arising from them.[30] In the absence of a genuine legislative will and intention, the subsequent drafting and interpretation of legislation led to results contrary to the essence of the Paris minority protection provisions.

The Paris Treaty for the Protection of Minorities provided for provisions and obligations of particular constitutional importance.[31] As both a constitutional guarantee and a legislative obligation, Romania undertook to recognize the provisions of the Paris Treaty as fundamental law and undertook not to enact any law, decree or official measure contrary to the provisions of the Treaty, nor to allow such a state act to remain in force.[32] Thus, Article 2 of the Paris Treaty for the Protection of Minorities enshrined the protection of life and liberty for all inhabitants of the country without distinction as to birth, nationality, language, race or religion, and Articles 3 to 8 regulated the corresponding citizenship issues together with the protection of property. Articles 8-10 ensured equality before the law in terms of civil and political rights, economic and cultural rights and also in terms of educational rights. Article 12 specified the substantive obligations of Romania, which had joined the system of organization for the protection of minorities set up within the framework of the League of Nations.

In terms of the internal origins of the legislative choice of values, only the provisions of the Resolution of Alba Iulia (hereinafter: Resolution of Alba Iulia)[33] contained elements that could have represented an integrationist approach to the new Romanian state framework. However, the unchanging idea of a unitary nation-state, the goal of a homogeneous Greater Romanian state, encouraged the Romanian constitutional assembly to ignore the Resolution of Alba Iulia. Without going into a detailed analysis of the Resolution of Alba Iulia, the subject matter of this paper being the unification with the Kingdom of Romania of Transylvania and the counties belonging to Hungary inhabited by Romanians, which is contained in Point I of the Resolution, Point III of the Resolution must also be highlighted.[34]

Point III included the recognition of full national freedom for all nationalities, in the matters of education, administration and justice in the mother tongue. The items on equal rights, freedom of religion, freedom of thought, freedom of the press, freedom of assembly and the right of association[35] highlight the substantive shortcomings of the Romanian constitutional order. In Point III, the land reform was also mentioned, as part of the aim to abolish large estates and feudal tenures. However, as will be explained herein, this objective, which was pursued with the political aims of the nation state, resulted primarily in the expropriation of land owned by Hungarians and the transfer of these lands to Romanians.

[30] L. Balogh 2020, 56.

[31] L. Balogh 2020, 52–57.; Nagy 1944. 20–25.

[32] Gaftoescu 1939, 115–116, Teodorescu 1929, 62., 66.

[33] Resolution of the Romanian National Assembly in Alba Iulia on the unification of the Romanian-inhabited parts of Hungary and Romania (Alba Iulia, 1 December 1918) in Gecsényi, L. & Máthé, G. (eds.) 2008, 399–401.

[34] Murzea & Matefi 2015, 230–231.

[35] Teodorescu, 1929, 64.

2.3. The link between the Constitution and Land Reform Acts of 1923 and the position of the nation-state

The First World War contributed to the accomplishment of the Romanian national and state goals, one of the consequences of which was the adoption of the Constitution of the Kingdom of Romania in 1923.[36]

The creation of the 1923 Constitution was justified both by the increase in territory of the State and by the economic and social changes[37] that had taken place since 1866, as well as by the amendments to the previous Constitution made by decree, which were incompatible with the rules of the Constitution.[38] During the process of making the constitution, both academics and politicians[39] put forward important ideas and proposals, acknowledging the serious shortcomings of the Constitution of 1866 and its contents,[40] and calling for the new constitution of this new state to become the basis of a truly effective constitutionalism.[41]

Although some authors gave priority to the Resolution of Alba Iulia and the principles contained therein,[42] to effective decentralization and to the specificities of the regions,[43] the majority position was based on the initial concept of a unitary nation-state.[44] In note of this, the constitution-making process did not change the choice of values of the nation-state, and openly rejected the provisions of the Paris Treaty for the Protection of Minorities and their incorporation into the constitution.[45] Accordingly, not only has the effective implementation of the Paris Treaty for the Protection of Minorities been called into question,[46] but some of its provisions have also been tacitly repealed.[47] During the constitution-making process, the view was accepted that, contrary to the clear wording of the treaty, it could not be incorporated into the constitution, as it would constitute a violation of Romania's sovereignty.[48] In the view of the Romanian political establishment, no international treaty could override the Romanian constitution or lead to international control of its internal affairs,[49] nor could the rules of international law constitute a criterion for assessing the unconstitutionality of draft laws.[50] All these legislative principles placed the Paris Treaty for the Protection of Minorities at the level of an ordinary law, below the constitution in the hierarchy of legal sources. Romania has

[36] The Romanian Constitution of 1923 (*Constituția României din 1923*)
[37] Durandin 1998, 224–225.; Murzea & Matefi 2015, 236–238.
[38] Nagy 1944, 15.
[39] Ionescu 2019, 742–744.
[40] Durandin 1998, 224–225.
[41] Nagy 1944, 25.
[42] Boilă 1922, 383.
[43] Grigorovici 1922, 70–71.
[44] Gusti 1922, 2.
[45] Nagy 1944, 49–50.
[46] L. Balogh 2020, 57.
[47] Nagy 1944, 74., 77–78.
[48] Nagy 1944, 51.
[49] György 2006, 8–9.
[50] Vasiliu 1936, 316.

resolved the conflict between international law and domestic law in favor of domestic law at the level of political and legislative decision-making, as well as at the judicial level.[51]

Accordingly, Article 1 of the Constitution of 1923 was still based on the unitary and indivisible state, but now also on the nation-state.[52] Romania, as an example of the impatient nationalism of the young nation states,[53] had always pursued a centralizing policy in order to establish a genuine nation-state. As a result of this attitude in Romanian politics, the state did not become a true democracy during this period, and its centralizing and homogenizing state objectives resulted in a break with centuries-old local relations. All of this, while justifiable from the point of view of the original content of nationalism, was a factor that prevented real social integration, and ultimately led to the disintegration of the state in the space of two decades.

The nation-state foundation was clarified – and the formal fulfilment of the equality of rights in Article 5 of the 1923 Constitution was nuanced – by the Romanian constitutional legal understanding that the members of a nation are individuals,[54] the totality of which as a nation results in a kind of spiritual and mental community.[55] Therefore the conclusion to be drawn from Romanian constitutional thought is that only those who profess this spiritual unity can be members of the nation as a community. Consequently, in the absence of individual affirmation, awareness and identification with Romanian spiritual belonging, the exclusion and subordination of individuals who do not profess it may acquire constitutional legitimacy.

On the above bases, despite the establishment of equal rights for citizens, there is an antagonistic relationship between the international obligation to protect minorities and the nation-state objective,[56] which the Romanian state imagined to resolve by ignoring international obligations. The declared equality of citizens' rights has been seriously distorted in the drafting of lower-level legislation and in the implementation of such legislation.[57] Accordingly, in many cases, both the legislature, the central government and the local administration have acted in a manner that is openly unconstitutional. The agricultural reform, which reflects a genuine social problem, is a striking example of this political and legal situation.

The Constitution of 1923 regulated in Article 131 the previous partial land reform and expropriation laws, which were not only considered to be part of the Constitution, but also recognized as part of it, in contrast with international obligations.[58] It should be pointed out that the constitutional recognition of the Paris Treaty for the Protection of Minorities was denied by the drafter partly because the subject matter of the Treaty was not considered to be constitutionally compatible, beyond the concept of sovereignty, on the basis of the equal rights clause, thus denying the constitutionality of any partial legislation deriving from these rights. Nevertheless, the Constitution of 1923 included, as

[51] Nagy 1944, 54–56.
[52] Brătianu 1922, 28.; Ionescu 2019, 745.; Murzea & Matefi 2015, 239.; Teodorescu 1929, 25.
[53] Lukacs 2012, 37.; Grigorovici 1922, 73.
[54] Budişteanu 1928, 13.; Teodorescu 1929, 49–50.
[55] Alexianu 1926, 10.; Dissescu 1915, 619.
[56] Boia 2016, 45–46.
[57] Nagy 1944, 65–69.
[58] Alexianu 1926, 168–169.

mentioned above, all the relevant articles of the Law of 17 July 1921 on land reform in Oltenia, Muntenia, Moldavia and Dobrogea, i.e. the Old Kingdom,[59] the Law of 13 March 1920 on land reform in Bessarabia,[60] the Law of 30 July 1921 on land reform in Transylvania, Banat, Karelia and Maramureş[61] and the Law of 30 July 1921 on land reform in Bukovina.[62] On the above, it is also worth noting that the Romanian constitutional assembly considered the need for firewood and timber for buildings of the inhabitants of the Old Kingdom, Bessarabia and Bukovina, under Article 132, to be of constitutional importance, and that it also adopted expropriation measures for this purpose.[63]

3. The land reform in service of building the nation-state

3.1. Concerning land reform laws generally

The origins of the land reform in Romania, as described above, can be traced back to the agrarian question that had not been resolved in the Old Kingdom, to the revolts that broke out in 1888 and 1907 on the basis of the agrarian question,[64] and to the land tenure systems of the predecessor states, in the light of the above-mentioned Point III of the Resolution of Alba Iulia.

The social tensions arising from the agrarian question were resolved by the Romanian state after the First World War by means of the partial legislation cited above. By its very nature, this partial legislation was a breach of the equality of rights and protection of property of citizens under international obligations, the radical nature, anti-minority impact and purpose of which are well known.[65]

A particular aspect of the issue was also the decades-long[66] lack of resolution of the question of informal citizenship guaranteed in Articles 3-7 of the Paris Treaty for the Protection of Minorities.[67] The 1924 Citizenship Act,[68] which was drafted after the entry into force of the 1923 Constitution, essentially ignored the provisions of the Paris Treaty for the Protection of Minorities.[69] Contrary to the provisions of the Treaty, the Act linked the acquisition of citizenship to the concept of residency in the absence of opting, by setting 1 December 1918 as the date of annexation of the territories to Romania.[70] Both the designation of the date and the concept of residence resulted in narrower legal

[59] Lege din 17 iulie 1921 pentru reforma agrară din Oltenia, Muntenia, Moldova şi Dobrogea (din vechiul regat).
[60] Decretul nr. 1036/1920 de reformă agrară pentru Basarabia.
[61] Legea nr. 3610/1921 pentru Reforma agrară din Transilvania, Banat, Crișana și Maramureș.
[62] Legea nr. 3608/1921 pentru reforma agrară din Bucovina.
[63] Alexianu 1926, 459–460.; Nagy 1944, 163.
[64] Bíró 2002, 43–45.
[65] Matheovits 1929, 35–41.; Durandin 1998, 237.
[66] Nagy 1944, 79–87.
[67] Ganczer 2013, 201–205.; Negulescu 1925, 98.
[68] Lege privitoare la dobândirea şi pierderea naţionalităţii române.
[69] Ganczer 2013, 205–206., 212–213.
[70] Nagy 1944, 77–79.

concepts and conditions than those of the international treaty of residence, which made the acquisition of Romanian citizenship partly impossible and partly left the determination of citizenship status to the discretion of the administrative authorities.[71] Given that, according to Article 18 of the 1923 Constitution, only Romanian citizens could acquire and own land in Romania under any title, the citizenship issue, which had dragged on for decades, provided a legal basis for the expropriation of property belonging to non-Romanian citizens. Restrictions on the acquisition of certain properties by foreigners are in principle legitimate and widely recognized, yet it is clear from the case at hand that the substantive legislation and its implementation were directed against persons whose citizenship status was not resolved.[72]

The land reform laws adopted as a result of this partial legislation have led to varying degrees of agrarian reform in different parts of the territory of Romania. Expropriations were the essence and the basis of the land reform. Among these laws, a comparison between the laws in the regions of Transylvania, Banat, Crișana and Maramureş[73] on one side and the Old Kingdom laws on the other side is justified, because their subject matter, purpose and implementation[74] clearly point to aspects of homogeneous nation-state building.[75]

In the case of the territories annexed from the Kingdom of Hungary, the aim stated in the law applicable to these was to increase and supplement village farms and communal pastures and forests, to promote national industry, to facilitate the living conditions of workers and public officials in towns, mining and spa centers, and to serve the public economic, cultural, social and educational interests. The law implemented in the Old Kingdom law was only intended to increase the area of village farms, to create communal pastures and to serve economic and cultural purposes of public interest.[76]

The Land Reform Act in the Old Kingdom capped the expropriation at 2 million hectares and only expropriated the property of those who owned at least 100 hectares of real estate. In contrast, no such limit was applied to the former Hungarian territories,[77] and the property of absentee owners was also expropriated,[78] in clear violation of the obligation to protect property under Article 3 of the Paris Treaty for the Protection of Minorities. The land reform in the former Hungarian territories – contrary to the aim stated in the law – practically meant the confiscation of Hungarian[79] and, to a lesser extent, Saxon private property, as well as church property and property put to the common use of local communities.[80] There were further differences in the size of the land to be expropriated in the case of land owned by natural persons, leaving significantly less land in the former Hungarian territories in the hands of the original owners.

[71] Bedő 1926, 423–428.
[72] Bonyhai & Valdmann 2020, 30.; Nagy 1944, 151.; Matheovits 1929, 42–44.
[73] Traditional regions and former parts of the Kingdom of Hungary.
[74] Matheovits i.m. 21–29.; Mikó 1941, 28–32.
[75] Boilă 1922, 385.
[76] Nagy 1944, 151–152.
[77] Benkő 2020, 27.
[78] Nagy 1944, 152–154.
[79] Bonyhai & Valdmann 2020, 27.; Jakabffy 1923, 572–575.
[80] Pál 1923, 4–15.; Bonyhai & Valdmann 2020, 29.; Nagy 1944, 153–156.

A further unjustified distinction was made in the legislation as regards the compensation paid for expropriation. The risk of post-war financial ruin was applied to expropriations in the former Hungarian territories, which were not paid immediately and unconditionally, and thus effectively constituted a confiscation of property.[81]

As a result of the above laws, which were made constitutionally significant, the expropriations weakened the property foundations of the minority communities and thus constituted a barrier to exercising educational and cultural rights by the members of these communities, especially the Hungarian one.[82]

The aspects concerning the German community should also be mentioned as a particular element of the above process and individual legislation. Despite its good relations with the state administration, the German minority could not avoid the legal dissolution[83] of the Saxon Universitas, the Saxon community's fundamental institution going back to medieval times, and the seizure of ¾ of its remaining assets not affected by the land reform,[84] thus making its centuries-old institutions financially unviable. The Orthodox Church later received the above-mentioned assets, while the Evangelical Church of Saxony was entitled to ¼ of the distributed property.[85]

3.2. The Romanian land reform before the League of Nations

For centuries, philosophical, political and legal thought has been preoccupied with the establishment of a universal organization that could be a depository and forum for cooperation between states, serving international peace and security. Following the First World War, the initiative was made a reality by the creation of the League of Nations, an organization which, at the initiative of the United States of America,[86] provided a primarily political and not a legal framework for the settlement of disputes between its members.[87] One element of these issues was the establishment of an international legal institution for the protection of minorities, based on the central role of the League of Nations, which in the case of Romania was enshrined in Article 12 of the Paris Treaty for the Protection of Minorities. The provisions provide for a double protection, on the one hand, permanent control by the League of Nations and, on the other hand, the immutability of the obligations recognized as fundamental law without the consent of the Council of the League of Nations.[88] Without analyzing the content of the laws for the protection of minorities before the League of Nations, it can be stated that, with few exceptions, it has not fulfilled this role. The reasons for this, apart from the Romanian

[81] Gyárfás 1925, 637–638.; Bonyhai & Valdmann 2020, 28.; Nagy 1944, 156.; Mikó 1941, 37.
[82] Nagy 1944, 101–106., 117–119., 151–158., 160–162.
[83] Lege pentru desființarea comunității de avere denumită Universitatea săsească și a celor șapte juzi, împărțirea patrimoniului ei și înființarea Așezământului Cultural Mihai Viteazul.
[84] Papp 1939, 43.
[85] Bíró 2002, 280.
[86] Szalayné Sándor 2003, 62.
[87] Teghze 1930, 357–358.
[88] Búza 1930, 142–143.

state's refusal of legal action, can be traced back to the Council of the League of Nations' attitude of favoring political solutions.[89]

Taking advantage of the minority protection system set up after the First World War, the Hungarian government made submissions to the League of Nations[90] on the Romanian land reform, which was considered to be of constitutional importance. Of these the submission of 15 March 1923 was finally submitted to the League of Nations.[91] At the core of the petition were elements of the Romanian legislation, under which the agricultural land of absentees could be expropriated in their entirety, except for areas of less than 50 acres.[92] The Paris Treaty for the Protection of Minorities underlined that in the case of opting for citizenship, the persons opting could retain ownership of the property. Nevertheless, the agrarian reform resulted in the expropriation of property owned by absentee owners. In accordance with Romanian law, only those were considered absentees, who were absent for a certain period of time,[93] which was essentially the period of the Romanian military occupation. During this period, a significant Hungarian population fled the former Hungarian territories. The Hungarian side recorded that, although the institution of expropriation was accepted as a legitimate means of depriving people of their ownership of land, however the amount of compensation being barely 1% of the real value, amounted in practice to confiscation of property in this case.[94] The definition of absentees, the predominantly Hungarian character of the expropriated properties, and Article 3 of the Paris Treaty for the Protection of Minorities clearly made the matter an issue of minority protection. Another aspect of the issue was added by the quoted Article 18 of the 1923 Constitution, according to which Romanian citizens could acquire and own land in Romania, while those opting for other citizenship were only entitled to the value of the properties they used to have. In this context, Romania argued that the issue of land reform had been a matter of Romanian law prior to the First World War and that it could in no way be directed against minorities as part of the constitutional fulfilment of the unification of the law.[95] According to the Romanian position, the Hungarian position would give quasi-privilege to Hungarian property owners, thus violating the principle of equal treatment. Romania explained that other nationalities have left the country and that the property rights of the optants, although guaranteed by international treaties, are subject to state restrictions and the amount of compensation is adequate, paid in state securities, and therefore no violation of rights can be established.[96] The Japanese rapporteur in the case, Adatci Mineitciro, proposed a procedure before the Permanent International Court, which the Romanian side rejected on socio-political grounds.[97] The parties then held

[89] Mikó 1941, 125.
[90] Durandin 1998, 237.
[91] Matheovits 1929, 53–55.
[92] Willer 1923, 606–609.; Búza 1930, 329–330.
[93] Matheovits 1929, 54–55.
[94] Búza 1930, 330–331.; Matheovits 1929, 68–70.; Mikó,1941, 37.
[95] Matheovits 1929, 18–19.
[96] Búza 1930, 331.
[97] Matheovits 1929, 55–58.

unsuccessful direct negotiations in Brussels[98] and the case was again referred to the Council of the League of Nations.[99] The essence of Hungary's argument was that, on legal grounds, obligations undertaken under international treaties cannot be overridden by the rules of domestic law. Hungary pointed out that the Romanian legal formulation of the absent persons constituted a serious offense, since until the Treaty of Trianon the territories belonged *de iure* to Hungary, and therefore the scope of Romanian law could not have been extended to this territory during this period. Hungary maintained that, although expropriation was a legitimate legal instrument, due to the amount of compensation in the present case, this expropriation actually constituted a confiscation of property.[100] The case was brought before the Hungarian-Romanian Mixed Arbitration Court in Paris by 348 plaintiffs, but the Court was unable to rule on the merits, mainly for reasons attributable to the conduct of the Romanian party.[101] After the failure of the court proceedings, the matter was again brought before the League of Nations, where eminent international lawyers of the time handed down their opinions.[102] In the end, despite direct negotiations and diplomatic exchanges of notes, the parties failed to reach a final agreement.[103]

Among the cases that have been settled on the merits, the case of the Hungarian settlers in Banat and Transylvania is noteworthy.[104] After 1904, the Hungarian government established settler communities in Transylvania and Banat in areas owned by the Hungarian Treasury, where settlers paid a purchase price for the properties by means of 50-year instalments following the payment of the first instalment. The settlers acquired ownership of the properties by registering the instalments in the land register. However the majority of these registrations did not take place until the spring of 1919.[105] As a result of the peace treaties, the territories concerned were transferred to Romania, and the land reform made it possible to expropriate the properties concerned. Another aspect of the case was that Romanian law considered null and void all official acts affecting the property of the Hungarian State after 1 December 1918, irrespective of the date of the underlying transaction, and consequently also the registrations made in the spring of 1919.[106] Based on this, the Romanian courts annulled the settlers' property rights and expropriated the property of owners registered before 1919. In response to the complaint concerning this matter, the Romanian government argued that the settlements were part of the Hungarian state's policy of *magyarization* and that no Romanian national had access to land in that area.[107] The Romanian position was that expropriation aims at an equal distribution of land, which could not be achieved by applying the general maximum expropriation rate, and therefore its infringement was

[98] Matheovits 1929, 58–68.
[99] Búza 1930, 331–333.
[100] Búza 1930, 333–335.
[101] Matheovits 1929, 71–104., 246–267.
[102] Matheovits 1929, 104–167.
[103] Matheovits 1929, 168–209.
[104] Asztalos 1931, 242–245.; Sulyok 1922, 20–24.
[105] Búza 1930, 284–285.
[106] Mikó 1941, 35.
[107] Búza 1930, 285.

justified. The Romanian side stressed that the purpose of its procedure was to resolve and settle the uncertainties that had arisen at the moment the territories changed sovereignty, and that the Romanian State's actions should be considered as internal and that the complaint should not be subject to the procedure of the League of Nations.[108] Romania later added to this argument that the settlers had not fulfilled the conditions for acquiring ownership.[109] The supplemented position appeared to be truthful on the facts, but the conditions would in principle have been met within fifty years, and the argument was therefore flawed and premature. In addition, the argument of neutrality minority-wise did not stand, since the Romanian delegation itself attached documents which proved that the settlers belonged predominantly to the Hungarian nationality, thus refuting the argument of *magyarization*. Nevertheless, the Romanian government, while maintaining its arguments, offered a total of 700,000 gold francs in compensation for the peaceful settlement of the case.[110] The Brazilian rapporteur in the case, Afrânio Mello-Franco, stated that although there were concerns about the validity of the land reform legislation and the interpretation of the settler contracts, the amount offered could be suitable for settling the case and recommended acceptance of the Romanian offer.[111] The procedure was concluded in the above manner, not in a legal but in a political way, due to the lack of client standing of the applicants, without having heard their views.[112] A set of rules for the distribution of the compensation were drawn up by the Romanian delegation and the Brazilian rapporteur, and the Romanian government had to report on its implementation.[113] A particularly severe provision regarding the payments was the deduction from the amount of compensation of the settlers' debt to the Hungarian State,[114] so that the amount agreed could be paid out at a reduced rate.

With regard to the expropriations carried out by the land reform, the confiscation of the property of the descendants of the former 1st Szekler Border Defence Infantry Regiment, the so-called 'private property of Csík', was particularly damaging and was not dealt with in any substantial way.[115] The anti-minority purpose of the confiscation is demonstrated by the fact that the property of the Romanian Nasaud II Border Regiment and the Romanian-Banatian XIII Border Regiment of Caransebes, which had essentially the same legal basis, were exempted from expropriation, even though their legal nature, purposes and functions were identical to those of the 'private property of Csík'.[116] In 1869, following the Austro-Hungarian Compromise of 1867, the King returned the properties of the previously confiscated 1st and 2nd Székely Border Defence Regiments to the communities of the counties of Csík and Háromszék,[117] respectively, in perpetuity and indivisibly, as private property. The property of the 'private property of Csík' was

[108] Búza 1930, 285–286.
[109] Búza 1930, 286–287.
[110] Sulyok 1930, 229–230.; Mikó 1941, 117.
[111] Balogh 1928, 270.
[112] Búza 1930, 287–288.
[113] Búza 1930, 288–289.
[114] Jakabffy & Páll, 1939, 211–212.
[115] Bíró 2002, 272–278.; Mikó 1941, 118–121.
[116] Kocsis 2006, 128–130.; Bíró 2002, 29–33.; 273.
[117] Today the territories are known as Harghita and Covasna counties.

62,539 acres of mostly pasture and forest land, but also included several high-value properties in the city of Csíkszereda (Miercurea Ciuc), residential properties, school buildings, theatre, barracks, model farm, orphanage, vacation houses, which property affected about fifteen thousand Szekler families.[118] Despite the protests, the actual expropriation started in the autumn of 1922, during which the authorities did not respect the rules of the land reform concerning the expropriation limit. In the course of the procedure, pastures and forests, as well as inland properties, were also expropriated at an extremely low compensation price, despite the exemptions provided by the law.[119] The expropriation decisions were annulled in the course of an administrative review of the appeals by the Agricultural Committee (in Romanian: *Comitetul Agrar*). The annulment did not result in the *restitutio in integrum* of the 'private property of Csík'. In the course of the review, the Romanian State found that the restitution of 1869 had only established a beneficial interest in the property. Accordingly, the property could not be subject to expropriation as *de facto* Hungarian State property, since it was subject to the succession of the Romanian State.[120] The argument of the Romanian State was not supported by any land register entry or state property inventory, yet the above reasoning resulted in the official confiscation of the 'private property of Csík'. In particular, the measure of expropriation violated Articles 12, 15 and 17 of the 1923 Constitution, in addition to the provisions of the Paris Treaty for the Protection of Minorities. It unconstitutionally excluded the right of access to the courts, the prohibition of confiscation of property and the basic conditions for expropriation. The question of property ownership was determined by an administrative authority instead of the courts, using a legal argument that should have been the responsibility of the judiciary. As a consequence of the argumentation of the public authority, the Romanian State was not obliged to pay compensation. The issue of the 'private property of Csík' was also a priority in domestic politics, and its unresolved nature led to the proceedings before the League of Nations. The complaint lodged on 25 June 1929 was later joined by several other complainants.[121] In this case too, the League of Nations opted for political conciliation rather than a legal solution and called on the Romanian State to return 18.5 % of the land, 1.5 % of the value of the property and to pay the pensions of the employees of the 'private property of Csík', a decision which was not implemented by the Romanian State.[122] According to the provisions of the law governing the details, the Romanian State would have made restitution only if the Board of Directors of the 'private property of Csík' had definitively waived its other claims, a condition which the beneficiary did not accept. For this reason, no solution was ultimately found.[123] Following the Second Vienna Award, the Hungarian State did not take similar action in the case of the Nasaud public property, despite concerns in this respect.[124]

[118] Mikó 1941, 35.
[119] Kocsis 2006, 130–133.
[120] Balogh 1930, 223–225.; Bíró 2002, 273.; Kocsis 2006, 134–135.; Mikó 1941, 34–35.
[121] Bíró 2002, 273–276.
[122] Bíró 2002, 276–277.; Mikó 1941, 308.
[123] Bíró 2002, 277–278.; Kocsis 2006, 141.
[124] Bethlen 1989, 88.

With regard to the cases that were brought before the League of Nations and were not dismissed, the complaint of 14 May 1930 concerning the pastures in and around the village of Csíkkarcfalva (in Romanian: *Cârța*) was resolved by the purchase of the land by the Romanian State,[125] as happened in the case of the complaint of 25 August 1934[126] concerning the forests and pastures of Zentelke (in Romanian: *Zam*) and Kalotaszentkirály (in Romanian: *Sâncraiu*).[127] On 28 July 1936, the National Hungarian Party filed a complaint concerning the seizure of the lands of the *Csángó* settlers of Deva,[128] which also led to some financial compensation.[129]

4. Closing remarks

The land reform in Romania, in addition to the international attention it has attracted, has resulted in numerous violations of individual rights. The Romanian element has always had an advantage in the expropriation and subsequent distribution of land. This is evidenced, among other things, by the extremely severe case of what is referred to as 'the crime of Haró'. In this case, the authorities refused to hand over the expropriated land to poor *Csángó* farmers, despite a final decision, sabotaged the land repossession procedure for years, and then, after the failure of an attempt to repossess the land, which claimed human lives, refused not only to investigate the case but also to exercise the right of amnesty.[130]

The land reform in Romania has clearly resulted in a break with the previous, centuries-old, property relations, characterized by ownership on the part of minorities, which, in addition to easing the tensions within Romanian society, aimed to make the economic situation of minorities more difficult, if not impossible.[131] The harmful provisions of the above described legislation were complemented by the economic nationalism that prevailed throughout the period,[132] and by the system of tax legislation that discriminated against minorities,[133] including property tax, which treated minorities as second-class citizens.[134] The easing of social tensions however was not successful, but it also made integration impossible. The new land property structure created as a result of the land reform did not solve the social crisis either,[135] and the agrarian issue remains a priority in the domestic policies of Romania, hit by economic and social crises.

[125] Mikó 1941, 304., 308.
[126] Mikó 1941, 186., 305., 308.
[127] Bíró 2002, 282–283.; György 2006, 209.; Mikó 1941, 305.
[128] Bíró 2002, 282.; György 2006, 209.; Mikó 1941, 306.
[129] Mikó 1941, 252.
[130] Meskó 1927, 318-324.
[131] Bárdi 2013, 213.
[132] Debreczeny 1937, 142–144.; Halász 1937, 146.; Bíró,2002, 267–268., 295–298.
[133] Bíró 2002, 284–285.; Nagy 1944, 200–207.
[134] György 2002, 160–162.
[135] Bonyhai & Valdmann 2020, 27., 29–30.

Finally, it should be pointed out that Robert William Seton-Watson himself, a fierce opponent of historical Hungary, described the land reform in Romania in an open letter as having ruined not only the Hungarian landowners but also, through the churches, the entire Hungarian intellectual class, thus creating the appearance of national revenge.[136]

[136] Mikó 1941, 37–38.

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Péter HEGYES*

Legal Responses to the Challenges Facing the Young Agricultural Generation**

Abstract

This paper introduces the legal responses to the challenges facing the young agricultural generation. The young generation of farmers is facing several challenges that make production difficult. Farmers will only be able to farm successfully in the face of such challenges if a supportive and enabling legislative environment is in place.
Keywords: risk factors, rainfall shortages/drought, agricultural irrigation, irrigation communities, labour shortage, unmanned aircraft

Introduction

The promotion of generational change in the agricultural sector, together with predictable regulation of farm transfers and the widest possible support for young farmers, is undoubtedly a necessary and welcome objective. In my view, however, maintaining the quantity and quality of agricultural production is a constantly growing challenge. It is essential that legislators at different levels keep up to date with these challenges and create a regulatory environment that is flexible and responsive, such that farmers can more effectively tackle various challenges. What challenges should we think about? A few major examples include: rainfall shortages/drought; labor shortages; limited availability of land; deterioration of land quality; complex and ever-changing and tightening regulatory environment; vulnerability of supply chains; limited marketing opportunities; implementation of the land-to-table concept; increasing consumer expectations. In this paper, I present the need for legislative preparedness in relation to the first two, that is, rainfall shortages/drought and labor shortages.

1. The need for legislation to address rainfall shortages/drought

Water shortages, drought, and rising temperatures as a result of climate change are posing serious challenges to agricultural production worldwide. The Working Group II contribution to the Sixth Assessment Report of the UN Intergovernmental Panel on

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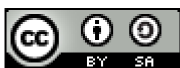

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Climate Change – IPCC[1] highlighted four main risk factors for Europe (a) heat, (b) declining agricultural production, (c) water shortages, and (d) floods.[2]

The primary risks and severe consequences are mainly related to heat extremes of increasing frequency, intensity, and duration as well as rising average temperatures.

The report paints a gloomy picture of the world's grain fields. As climate change intensifies, about a third of currently arable land is expected to become unsuitable by the end of the century, and global yields of four crops – maize, rice, wheat and soya, that provide nearly three-quarters of the world's calories – could fall by as much as 10-30% by the end of the century. Increasing heat, drought, water shortages and their combined effects are increasingly making production impossible in many places, which could drive up food prices and lead to a food crisis.

According to the measurements of the Hungarian Meteorological Service, the summer of 2021 in the country was 1.2 degrees Celsius warmer than average, the fifth hottest since 1901. The two-month period from mid-June to mid-August was largely dominated by heat waves, while the beginning and end of the season were cooler than usual. Summer rainfall was significantly below the 1991-2020 average. The last time we had a similarly dry summer was in 2015. Rainfall was below normal in all three months. June was unusually dry; so much so that it was the driest June in 121 years. Only 22% of the monthly average rainfall. Precipitation in July was 13% below normal and in August 8%.[3]

Under these circumstances, it is of crucial to have a transparent legal environment for irrigation. In recent years, the legislature has sought such implementation on several points. Among these, the new provisions on agricultural irrigation wells and the main provisions of Act CXIII of 2019 on Irrigation Management are presented below.

The re-regulation of irrigation wells is the result of a long legislative process. In the past, the possibility of establishing wells up to a depth of 80 meters without notification or authorization was raised. The President of the Republic sent the relev ant Bill No T/384 to the Constitutional Court to declare its non-conformity with the Fundamental Law. In its decision No 13/2018 (IX.4.), the Constitutional Courtmade the following main observations: (a) groundwater under exclusive state ownership is protected under both Article 38 (1)[4] and Article P) (1)[5] of the Fundamental Law; (b) the state can only manage it in a way that accounts for only the common needs of present generations, but also those of future generations, and the preservation of natural

[1] Working Group II contribution to the Sixth Assessment Report: Climate Change 2022: Impacts, Adaptation and Vulnerability.

[2] For a summary of the Report, see: Lehoczky A 2022.

[3] OMSZ 2021

[4] Article 38 (1) of the Fundamental Law: "*The property of the State and of local governments shall be national assets. The management and protection of national assets shall aim at serving the public interest, meeting common needs and preserving natural resources, as well as at taking into account the needs of future generations. The requirements for preserving and protecting national assets and for the responsible management of national assets shall be laid down in a cardinal Act.*"

[5] Article P) (1) of the Fundamental Law "*Natural resources, in particular arable land, forests and the reserves of water; biodiversity, in particular native plant and animal species; and cultural artefacts, shall form the common heritage of the nation, it shall be the obligation of the State and everyone to protect and maintain them, and to preserve them for future generations.*"

resources; (c) the need not only to maintain but also, where appropriate, to tighten the water licensing regime, given the strategic need to protect the quantity and quality of groundwater resources; (d) if the activity can be carried out without authorization and notification, this in itself constitutes a step backward. To violate the principle of non-regression,[6] environmental degradation is unnecessary; the risk of deterioration is sufficient.

Following an unsuccessful bill, Act LVII of 1995 on Water Management (Vgtv.) was amended in 2020. Consequently, the concept of agricultural irrigation wells, as well as the specific provisions for their installation, were defined. According to Annex 1, point 35 of the Vgtv., agricultural irrigation wells are: "*a groundwater abstraction facility that provides water exclusively for agricultural purposes on agricultural land.*" For the installation of these wells, under certain conditions, a water installation permit is not required, and administrative approval after prior notification is sufficient. Conjunctive conditions for approval are: (a) the well is installed without using the internal, external, and hydrogeological protection dams, protection areas, karst or stratified water resources designated, under designation, or previously delimited, in accordance with the Government Decree on the Protection of Aquifers, Remote Aquifers and Water Facilities for Drinking Water Supply, and on an area not affected by soil or groundwater contamination as recorded in the official register, (b) the depth to the bottom of the well does not exceed 50 meters and does not reach the first waterproof layer, (c) the irrigation system connected to the well is used exclusively for the irrigation of areas under the cultivation of the installer or operator, (d) the well has been previously registered in the official register by the installer in accordance with the Government Decree on the Exercise of the Authority's Powers in the Field of Water Management and, after approval of the registration, the well has been equipped during the installation with a digital well water meter to measure water volume.[7]

The Act also allows farmers to register their agricultural irrigation wells installed without a permit until the end of 2023 without imposing a fine, provided that the well meets the following conditions: (a) the well was installed before 1 January 2021 without using the internal, external and hydrogeological protection dams, protection areas, karst or stratified water resources designated, under designation or previously delimited in accordance with the Government Decree on the Protection of Aquifers, Remote Aquifers and Water Facilities for Drinking Water Supply, and on an area not affected by soil or groundwater contamination as recorded listed in the official register, and has been installed without a permit or by derogation from the permit, contrary to the legislation in force at the time of its installation (b) the depth to the bottom of the well does not exceed 50 meters and does not reach the first waterproof layer, and (c) the irrigation system connected to the well is used exclusively for the irrigation of areas under the cultivation of the installer or operator.[8]

Act CXIII of 2019 on Irrigation Farming (Ögtv.) was adopted to preserve natural resources, strengthen the adaptability of agriculture, promote irrigation farming, and establish irrigation communities. According to the Act, an irrigation community is a business association or cooperative whose members are farmers with a right to use a

[6] On the principle of non-regression, see: Bándi 2017, 9–23.
[7] Vgtv. 28/A. § (1a)
[8] Vgtv. 45/N. § (1)-(3)

parcel of land in the irrigation district.[9] The area used for the operation of the irrigation community and including the parcels of non-residential land that the members of the irrigation community wish to irrigate is called the irrigation district.[10] The irrigation community in the irrigation district provides the possibility for irrigation: (a) for arable crops and industrial vegetables, at least 100 hectares, (b) for horticultural crops and industrial arable crops, at least 10 hectares.[11]

In 2020, around 180 thousand hectares of land had a water permit for irrigation. The number of communities is still growing. In September 2021, the number of recognized irrigation communities was over 70.[12]

Applications for recognition of irrigation communities must be submitted to the irrigation management body,[13] which submits the applications, together with its professional opinion, to the Minister responsible for agricultural policy. The Minister shall then designate the irrigation district in the decision, recognizing the irrigation community, and considering the hydrographic, hydrogeological, and topographical conditions within the boundaries of the irrigation development area.[14]

Getting irrigation water to an investor's land is often a barrier to investment. Therefore, the Act states that irrigation is in public interest. That is, the water transfer must be solved and an irrigation easement must be granted. Under this provision, the owner or occupier of the servient estate must tolerate the construction and operation of an irrigation water facility on their property, if it does not preclude the proper use of the real estate.[15] The owner of the property is entitled to compensation corresponding to the extent of the restriction.[16]

2. Labor shortage, legislative environment for technological developments[17]

To the same extent as climatic problems, farmers are affected by labor shortages and difficulties in retaining labor. Agriculture involves hard physical work, which

[9] Ögtv. 7. § (1)
[10] Ögtv. 1. § 5.
[11] Ögtv. 7. § (2)
[12] Infojegyzet 2021.
[13] currently: National Land Centre
[14] Ögtv. 9. § (1)
[15] Ögtv. 2. § (1)
[16] The parties may agree on the amount of compensation. Lacking this, the compensation amounts set out in the implementing decree of the Act (Government Decree 302/2020 (29.VI.)) shall apply. Under Annex 1 of the Decree, the compensation for the establishment of an irrigation easement shall be calculated in the following way for land used for agriculture and forestry: K = 50.000,- Ft * AK * T * G, where: K − the amount of compensation, AK - the average gold corona value of the area concerned, T − the size of the area concerned in hectares, G – land-use multiplier, which is (a) in the case of areas above-ground and areas registered in the Hungarian National Forest Inventory, in the case of areas to be used for above-ground and below-ground irrigation investments G = 1; (b) for areas to be used for below-ground irrigation investments, with the exception of forests G = 0,3
[17] I have dealt with the legislative processes arising from the development of agricultural technology and the development of the regulation of unmanned aircraft in several studies in Hungarian. This chapter provides an English summary based on these.

nowadays requires multi-faceted skillset, such as technological skills. Labor shortages are also exacerbated by the outflow of potential workers.[18]

In the face of obstacles, such as labor shortages, deepening challenges, and the security of supply, ensuring the sustainability of agricultural production will require heavy reliance on technological developments that can fundamentally change traditional agricultural activity. Technological developments and robotization can also alleviate labor shortages. Therefore, it is essential to monitor developments and create an appropriate regulatory environment to ensure that the relevant legislative environment does not become obsolete, acting as a barrier in the application of innovative opportunities.

The need to link agriculture to technological developments is already reflected in documents at the EU and national levels, which can certainly be the first step towards an appropriate regulatory environment.

At the EU level, reference can be made in this context to the European Parliament's resolution on Enhancing innovation and economic development in future European farm management.[19] The resolution gives priority to the need to disseminate innovative technologies in the field of agriculture, and in my view, it is a document that rightly anticipates the future of EU agricultural policy.

The impact of technological development on sustainability is also highlighted by the European Commission in its Communication, The Future of Food and Farming.[20] The Commission emphasizes that technological development and digitalization are major enablers, advancing resource efficiency and aiding development of environmentally and climate-conscious agriculture, thereby reducing environmental and climate change impact on agriculture, improving resilience and land quality, and reducing costs for farmers.

The Communication sets out the following benefits of smart agriculture: (a) increased production: optimized planting, caring, and harvesting improves yields; (b) real-time data and product information: real-time access to information on sunlight intensity, soil moisture, markets and livestock etc. to help farmers make better and faster decisions; (c) better quality: accurate information on production processes and product quality helps farmers to adapt and improve product characteristics and nutritional content; (d) improve livestock health: sensors can detect and prevent deterioration in animal health at an early stage, reducing the need for treatment; (e) less water consumption: thanks to soil moisture sensors and more accurate weather forecasting, water consumption can be reduced; (f) lower production costs: automated processes improve resource efficiency in crop and livestock production, leading to lower production costs; (g) accurate analysis of farms and agricultural areas: historical yield data helps farmers plan and forecast future yields; (h) reduced environmental, energy and climate footprint: increased resource efficiency reduces the environmental and climate impact of food production.

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[18] See more: Csizmadia 2022.

[19] 07 June 2016., 2015/2227 (INI).

[20] The Future of Food and Farming - Communication from the Commission to the European Parliament, the Council, he European Economic and Social Committee and the Committee of the Regions; Brussels, 29. 11. 2017, COM(2017) 713 final.

At the national level, the Digital Agricultural Strategy of Hungary (DAS), established in the framework of the Digital Welfare Program is worth highlighting.[21] The Strategy sets the objective of promoting the use of the benefits of digital technological development. The areas covered by the DAS include agricultural production, farms, product trajectories, as well as human resources development, research, development and innovation, public administration and public services, development policy, and aid systems.[22]

In recent years, the development of regulation of unmanned aircraft has received particular attention, which illustrates my point made at the beginning of this chapter that the slowness of the legislative process may be an obstacle to the rapid application of emerging new technologies. I will introduce the legal problems and solutions to the issues related to the use of unmanned aircrafts, i.e. drones, in agriculture, and the development of the regulation. Drones can be used in agriculture for a wide range of purposes. To illustrate it with a few examples: (a) damage assessment; (b) mapping; (c) search for bee pastures; (d) spraying in places difficult to access with conventional machinery; (e) data collection and analysis; (f) protection of plantations;[23] (g) facilitating certain management activities.[24]

The above examples show that drone use can facilitate and make farming more efficient. However, the legal provisions for their operation were the result of a very long process.

The starting point should be spring 2019. Two Commission Regulations were published in March and May 2019, respectively, which laid down provisions specifically related to unmanned aircraft. The power to adopt implementing regulations is laid down in EU Regulation 2018/1139 on common rules in the field of civil aviation.[25] Commission Regulations (EU) 2019/945[26] and (EU) 2019/947[27] were also published. Regulation (EU) 2019/945 establishes provisions for unmanned aircrafts as products (product requirements, obligations of economic operators, product conformity, notification of conformity assessment bodies, EU market surveillance). The measures of

[21] Legal basis: Government Decree No 1470/2019 (VIII.1.) on the promotion and coordination of the digitalization of Hungarian agriculture, on the Digital Agricultural Strategy of Hungary
[22] DAS point 2.2. first paragraph
[23] See: Scarecrow from the air: In Germany, one of the largest blueberry plantations has recently been protected from ravenous starlings by an eagle-shaped drone, Szalay & Szentpéteri 2019.
[24] See for example: Szalay & Szentpéteri 2019.
[25] Regulation (EU) 2018/1139 of the European Parliament and ff The Council (4 July 2018) on common rules in the field of civil aviation and establishing a European Union Aviation Safety Agency, and amending Regulations (EC) No 2111/2005, (EC) No 1008/2008, (EU) No 996/2010, (EU) No 376/2014 and Directives 2014/30/EU and 2014/53/EU of the European Parliament and of the Council, and repealing Regulations (EC) No 552/2004 and (EC) No 216/2008 of the European Parliament and of the Council and Council Regulation (EEC) No 3922/91; HL L 212, 22 08 2018, 1–122.
[26] Commission Delegated Regulation (EU) 2019/945 of 12 March 2019 on unmanned aircraft systems and on third-country operators of unmanned aircraft systems HL L 152., 11 06 2019, 1–40.
[27] Commission Implementing Regulation (EU) 2019/947 of 24 May 2019 on the rules and procedures for the operation of unmanned aircraft, HL L 152., 11 06 2019, 45–71.

Regulation (EU) 2019/947 establishing provisions on drone operations will be directly applicable in all Member States from 31 December 2020.[28] The Regulation authorizes the Member States to promulgate detailed rules concerning the registration, rules on flights performed by unmanned aircraft, the detailed rules of registration and training of unmanned aircraft pilots, the rules for designating training organizations, the detailed rules for the operation of unmanned aircraft, and rules for their maintenance.

Prior to the applicability of Regulation (EU) 2019/947, the Hungarian regulation on the operation of drones – at least for agricultural use – was practically unenforceable. The central element of the legislation was the obligation of prior notification of use. When using Hungarian airspace, a so-called *ad hoc* airspace use permit had to be applied for. The application for the designation of *ad hoc* airspace had to be submitted to the military aviation authority at least thirty days before the planned use, using the form provided by the military aviation authority and published on its website. An *ad hoc* airspace could be designated for the duration of the event that gave rise to the airspace designation, but for a maximum of 30 days, provided that no *ad hoc* airspace could be designated at the same time if it overlapped in space and time.

In most cases, this rule has led to unrealistic or difficult enforcement or abusive behavior in drone use. [29]

This was also true for agricultural applications. An example is the legislation on the prevention of wildlife damage and the procedure for assessing it. According to the Hungarian Hunting Act (hereinafter: Vtv.), [30] wildlife damage is defined as over the ten per cent (natural self-sustaining value) of the damage caused[31] by (a) red deer, fallow deer, roe deer, wild boar and mouflon in agriculture and forestry, and (b) roe deer, hares and pheasants in vineyards, orchards, arable land, afforestation and nurseries.

Regarding damage prevention, both the user of the land[32] and the holder of the hunting rights, who is liable for the damage,[33] have a preventive obligation. In this context, it should be highlighted that the rules applicable to land users include the obligation to control the areas cultivated by them using professional agrotechnology and protect against wildlife damage to the extent and in the manner they can be expected,

[28] The original content of the Regulation was to apply directly from 1 July 2020, but the Commission decided to postpone the date of application in view of the COVID-19 pandemic. See Commission Implementing Regulation (EU) 2020/746 of 4 June 2020 amending Implementing Regulation (EU) 2019/947 as regards postponing dates of application of certain measures in the context of the COVID-19 pandemic (Text with EEA relevance), C/2020/3599, HL L 176., 05 06 2020, 13–14.

[29] An example of this is the case, which has been widely reported in the press, of a private individual who applied for and received an ad hoc permit to use the entire airspace above Lake Balaton for the duration of the traditional and widely publicized Blue Ribbon sailing race held in July 2018 and then wanted to sell his right to use the airspace for a financial consideration. See HVG Tech 2018.

[30] Act LV of 1996 on Wildlife Protection, Wildlife Management and Hunting

[31] Vtv. 75. § (2)

[32] See Vtv. 78-79. §

[33] Pursuant to Article 75 (5) of Vtv., the person who carries out wildlife management activities with the wildlife species causing the damage and is entitled to hunt it, and on whose hunting grounds the damage occurred, is obliged to compensate the wildlife damage.

during critical periods.[34] This obligation could be fulfilled in an automated way through the continuous use of unmanned aircraft, but, by definition, a take-off should not be preceded by the acquisition of an ad hoc airspace use permit.

Vtv. lays down mandatory time limits for the assessment of damages as follows: (a) fifteen days notification period from the occurrence or discovery of the damage;[35] (b) a settlement period of five days from the date of notification of the damage;[36] (c) a five-day deadline for requesting a damage assessment procedure under a notary's jurisdiction;[37] (d) three working days for the secondment of experts;[38] (e) five-day deadline for expert assessment of the damage.[39]

Following the above steps, the procedure ends with an attempt to reach a settlement before the notary, failing which the injured party may apply to the courts for compensation.[40] In this case, too, it can be seen that the deadlines set by Vtv. and the deadlines for obtaining the *ad hoc* airspace permit were incompatible.

With Regulation (EU) 2019/947 on operations and the Hungarian legislation laying down detailed rules,[41] the previous regulation has been improved. The starting point of the regulation is that unmanned aircraft can operate in the Single European Sky airspace[42] in the same way as piloted aircraft. However, operators or remote pilots conducting operations must comply with predetermined conditions, depending on and proportionate with the level of risk associated with the equipment used.

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[34] See Vtv. 79. § (1) d)

[35] Vtv. 81. § (1): *"Claims for compensation for wildlife damage, hunting damage and damage caused to the wildlife (for the purposes of this Section, hereinafter referred to collectively as 'damage') shall be submitted in writing to the person responsible for the damage within fifteen days of the occurrence or discovery of the damage."*

[36] Vtv. 81. § (2)

[37] Vtv. 81. § (2): *"If the injured party and the person liable for the damage do not reach a settlement on the compensation for the damage and the amount of compensation within five days of the notification pursuant to paragraph (1), the injured party may request the notary of the municipality competent for the place where the damage occurred (hereinafter referred to as 'notary') within five days, in writing or orally, to conduct a damage assessment procedure for the establishment of a settlement between the injured party and the person liable for the damage."*

[38] Vtv. 81. § (3): *"The assessment of the damage may be carried out by a damage expert (hereinafter referred to as 'expert') who is qualified in accordance with the Minister's decree. The expert shall be appointed by the notary within three working days."*

[39] Vtv. 81. § (4): *"The damage assessment must be carried out within five days from the date of secondment, in accordance with the simplified rules for wildlife damage assessment laid down by the Minister's decree."*

[40] Vtv. 81. § (5)-(8)

[41] Act XCVII of 1995 on Air Transport (hereinafter Lt.); Government Decree 4/1998 (I.16.) on the use of Hungarian airspace; Government Decree 39/2001 (III.5.) on compulsory liability insurance for air transport; Government Decree 532/2017 (XII.29.) on the additional procedural rules of the air transport authority; Joint Decree 26/2007 (III.1.) GKM-HM-KvVM on the designation of Hungarian airspace for air transport; 6/2021 (II.5.) ITM Decree on the designation of organizations for the training and examination of remote pilots, the detailed rules for the training and examination of remote pilots and the fees for participation in the examination

[42] Single European Sky airspace: the airspace above the territory to which the Treaties apply and any other airspace to which Member States apply Regulation (EC) No 551/2004 in accordance with Article 1(3) of that Regulation - Article 3 33. of Regulation (EU) No 2018/1139

In the light of the above, the Commission Regulation defines three categories of operations: open, special, and subject to authorization. [43]

According to Article 4 of the Regulation, an operation is considered an open category UAS operation only if the following requirements are met: (a) the UAS belongs to one of the classes defined in Regulation No 2019/945 or is self-built; [44] (b) the maximum take-off weight of the unmanned aircraft is less than 25 kg; (c) the remote pilot ensures that the unmanned aircraft remains at a safe distance from people and does not fly over crowds; [45] (d) the remote pilot keeps the unmanned aircraft in VLOS[46] as a general rule at all times; (e) as a general rule, during flight, unmanned aircraft are kept within 120 meters of the nearest point on the ground; (f) during flight, the unmanned aircraft is not carrying dangerous goods or spraying any material.

The above requirements are conjunctive conditions, so if any of them are not met, the operation will be considered a special category. The most fundamental difference between the two categories is that an open UAS operation is not subject to prior authorization, while a special operation, as a general rule, can only be launched with an operation permit issued by the competent authority of the Member State. [47]

An operation is only considered as a UAS operation of the category requiring authorization if the following requirements are met: (a) the UAS used belongs to the certified and special category[48] according to Regulation No 2019/945; and (b) the

[43] Regulation No 2019/947 Article 3

[44] Under certain conditions. according to the decision no 768/2008/EC of the European Parliament and of the Council of 9 July 2008 on a common framework for the marketing of products, and repealing Council Decision 93/465/EEC (HL L 218., 82. p.), operations of UAS types placed on the market before 1 July 2022 are considered also as open category.

[45] Crowd: a gathering where, due to the dense location of the participants, the movement of individuals is restricted - Article 2 3. of Regulation No 2019/947

[46] The regulation distinguishes between VLOS, i.e. within line of sight, and BVLOS, i.e. out of the line of sight. In VLOS, the remote pilot is able to maintain continuous, unassisted visual contact with the unmanned aircraft, which allows the remote pilot to influence the flight path of the unmanned aircraft in relation to other aircraft, persons and obstacles in order to avoid collisions - Article 2 7-8. of Regulation No 2019/947.

[47] Regulation No 2019/947 Article 3 a)-b) and Article 5(1)

[48] Regulation No 2019/945 Article 40 *"(1) The design, manufacture and maintenance of a UAS shall be certified if the UAS meets any of the following conditions: (a) a feature is of a size equal to or greater than 3 m and is designed to operate above a congregation of people; (b) designed for the transport of persons; (c) it is designed for the carriage of dangerous goods and must be designed to be highly resistant to reduce the risk to third parties in the event of an accident; (d) it is used in a specific category of operation as defined in Article 5 of Implementing Regulation (EU) No 2019/947 and the competent authority, following the risk assessment provided for in Article 11 of Implementing Regulation (EU) No 2019/947, considers that the risk associated with the operation of the UAS cannot be adequately mitigated without certification of the UAS.*

(2) UAS subject to certification shall comply with the applicable requirements of Commission Regulations (EU) No 748/2012 (15), (EU) No 640/2015 (16) and (EU) No 1321/2014.

(3) If a UAS used in the special category is not required to undergo certification as referred to in paragraph (1), it shall have the operation permit issued by the competent authority, and have the technical functions set out either in the standard scenario in Appendix 1 to the Annex to Implementing Regulation (EU) 2019/947 or in the light UAS operator certificate (LUC) set out in Part C of the Annex to Implementing Regulation (EU) 2019/947."

operation is carried out under at least one of the following conditions: over a crowd; involving the transport of persons; involving the transport of dangerous goods that may present a high risk to third parties in the event of an accident.

For open category UAS operations, the minimum age for remote pilots is 16 years. [49] Although Regulation (EU) 2019/947 empowered the Member States to reduce the minimum age for open category operations by up to four years,[50] the Hungarian legislator did not make use of this possibility, so in Hungary, only persons aged 16 or over may perform open category operations.

Under the current legislation, ad hoc airspace does not need to be designated for open category operations as a general rule. Exceptions to this rule are (a) it cannot be performed in accordance with the flight rules of Regulation (EU) 2019/947 and the general rules on the use of airspace by unmanned aircraft set out in Government Decree 4/1998 (16 January), or (b) an Act or Government Decree requires the designation of *ad hoc* airspace. [51]

An example of the latter is that under Lt. Article 5 (3) the Hungarian airspace may be used for UAS operations over populated areas by an unmanned aircraft in the case of the designation of *ad hoc* airspace.

Compared to the previous regulation, detailed and essentially predictable rules have been established for the use of unmanned aircraft. The question arises, however, as to what objectives in the field of agriculture could be achieved. The above-listed, typically mapping and survey purposes can be performed with open category operations, but the problem is more complex if a spraying drone is to be used. In this case, rules applicable to unmanned aircrafts and pilots are no longer the only ones that apply.

The use of spraying drones, in addition to what has been explained so far, faces further legal obstacles. Pursuant to FVM Decree No 43/2010 (IV.23.) on plant protection, plant protection machinery with a tank of a nominal volume of more than 5 dm^3 - with the exception of plant protection machinery for research, testing, experimental or exhibition purposes - must undergo a type certification procedure for droplet formation and spray technology before being placed on the market.[52] The mandatory type certification procedure is carried out by the National Agricultural Research and Innovation Centre Institute of Agricultural Engineering (NAIK MGI).

The above-mentioned plant protection machinery may be placed on the market in Hungary only if a marketing authorization has been issued on the basis of a type certification procedure carried out by the NAIK MGI.[53]

[49] Regulation (EU) 2019/947 Article 9(3) Member States may lower the minimum age using a risk-based approach, taking into account the specific risks associated with operations on their territory: a) for remote pilots performing UAS operations in the open category, up to 4 years; (...)
[50] Regulation (EU) 2019/947 Article 9(1)
[51] Government Decree 4/1998 (I. 16.) 1. § (3a) d)
[52] FVM Decree 43/2010 (IV. 23.) § 32 (1). An exception is made in paragraph 2, which provides for the administrative certification of plant protection machinery with an internationally valid quality certificate.
[53] Summary of Placing on the Market and the Registry of Plant Protection Machinery Authorized for Placing on the Market.

There is currently no valid type certification standard for spraying drones, so they cannot be placed on the market in Hungary or used for pesticide application. [54]

In addition to the lack of certification requirements, a further problem was that spraying drones were not covered by the joint FVM-GKM-KvVM Decree 44/2005 (V. 6.) on aerial work in agriculture and forestry. According to the Decree, agricultural aviation is defined as the use of agricultural aircraft for crop protection and nutrient management activities in agriculture or forestry using plant protection products, products with plant protection effects other than plant protection products, or fertilizer products. [55] Agricultural flights may be carried out by agricultural aircraft, which under the previous legislation could only be a closed-cabin aircraft for agricultural flights with a corresponding airworthiness certificate. This definition by default excluded unmanned aircraft from the Decree's scope; therefore, its rules on pilots and crew were not applicable/enforceable for spraying drones. This legal limitation was only lifted by the legislature in 2022. The amending decree[56] adopted in February 2022 integrated the category of unmanned aircraft into the legislation. As a result, the definition of an agricultural aircraft has been changed to either a closed-cabin aircraft for agricultural flights or an unmanned aircraft for agricultural flights.[57] In addition to the basic training courses set out above, pilots of agricultural unmanned aircrafts must also complete basic unmanned aircraft plant protection training.[58] Unmanned aircraft used for agricultural flights may only be flown from the area within the authorized airspace.[59] Plant protection products and products with plant protection effects other than plant protection products authorized for application by unmanned aircraft may be applied by unmanned aircraft. [60] The activity poses an increased risk, so it was established including a guarantee that, in the case of agricultural flights by unmanned aircraft, the flight path must not pass over any inhabited area, livestock area, surface water, water abstraction plant, water protection area, municipal wastewater treatment plant, nature reserve, the core area of a forest reserve, or a biosphere reserve. [61]

3. Summary

In this paper, I wanted to draw attention to the fact that the young generation of farmers is facing a number of challenges that make production difficult. Farmers can farm successfully in the face of challenges if a supportive and enabling legislative environment is in place. I have tried to demonstrate through two examples how complex it is to legislate such problems; nevertheless, it is essential that the legislative process does not involve multi-year delays, because then it becomes an obstacle to farming, lagging behind technological progress.

[54] See: Agroforum 2019.
[55] Joint FVM-GKM-KvVVM Decree 44/2005 (V.6.) 2. § 1.
[56] AM Decree 4/2022 (II.8.)
[57] Joint FVM-GKM-KvVVM Decree 44/2005 (V.6.) 2. § 2.
[58] Joint FVM-GKM-KvVVM Decree 44/2005 (V.6.) 3. § (10)
[59] Joint FVM-GKM-KvVVM Decree 44/2005 (V.6.) 4. §
[60] Joint FVM-GKM-KvVVM Decree 44/2005 (V.6.) 9. § (1a)
[61] Joint FVM-GKM-KvVVM Decree 44/2005 (V.6.) 13. § (1a)

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Ágoston KOROM*

Requirements for the cross border inheritance of agricultural property Which acts of the primary or secondary EU law can be applied in the case of agricultural properties' inheritance?**

Abstract

Regulation 650/2012/EU does not substantially affect the powers of Member States with regard to the inheritance of agricultural property, but Member States are not exempted from the EU control mechanism on fundamental economic freedoms in this area. Article 345 of TFEU, according to settled practice, prevails as private autonomy which, in principle, may not extend to national rules on the succession of agricultural property. Most of the CJEU decisions in this area concern to inheritance duties, where the CJEU exercises special control.
The practice developed by the CJEU in the case of other real estate operations in the Member States may apply to the rules of the Member States on the succession of agricultural real estate, taking into account that, in addition to the free movement of capital and property rights guaranteed by Article 17 of the Charter, in the legal developments in the KOB Sia case the freedom of establishment and Directive 2006/123 may be applied in certain circumstances.
Keywords*:* EU rules on inheritance of agricultural property, applicability of Regulation 650/2012/EU, inheritance of real estates, free movement of capital, freedom of establishment, Directive 2006/123

1. Introduction

In our view, Regulation 650/2012/EU on inheritance is a significant step; it does not settle all uncertain situations and decisively influences member states' margin of appreciation. There are no CJEU judgments about member states' inheritance regulations on agricultural property.

To answer the question raised in the title, we will examine and categorize case law on property, agricultural property, and inheritance of property.

Member states' transactions on the property can be categorized; first, we examine CJEU decisions concerning the free movement of capital. The judgment in the Segro case and Commission/Hungary – that the Member State attempted to justify by stepping up against the misuses – can be divided. We analyze CJEU decisions on secondary property, in which the free movement of capital was applied as part of the negative integration form.

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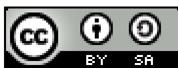
https://doi.org/10.21029/JAEL.2022.33.63

After the legal development of the Kob Sia decision, in the case of agricultural property, the CJEU applied freedom of establishment and Directive 2006/123 instead of the free movement of capital.

Next, we examine the decisions related to inheritance duties in which the free movement of capital was applied.

2. Common EU provisions about the EU control on the free movement of capital

Any measure of Member States that considers the internal market's operation belongs to the EU control mechanism under the negative integration form. The CJEU case law determined which fundamental freedom should be applied to Member States' transactions.[1]

The CJEU primarily applies the free movement of capital in the case of transactions of immoveable property if it examines Member States' measures related to the free movement of capital.[2]

It should be determined that in the case of the inheritance of agricultural property, EU law provisions shall be applied in line with the negative integration form related to economic freedoms.

At the beginning of the integration, the free movement of capital was subordinated to other fundamental freedoms until the 1980s; the Single European Act and the Directive of 1988 released the free movement of capital.[3] The Treaty of Amsterdam repealed the Directive; nevertheless, it continued to be influential because of CJEU's case law.[4] It should be mentioned that the scope of the Directive is not limited; therefore, other operations – which are not enumerated in the Directive's Appendix – also belong to the free movement of the capital.

Article 345 of the TFEU, on the autonomy of property, does not justify the restrictions imposed by the Member States; this is the decade-long practice of the CJEU.[5] This only means private law autonomy to Member States,[6] including public law aspects related to the property register and differences in ownership transport applied by specific codes.

In general, a cross-border element is essential to the free movement of property; however, the CJEU's case law is not entirely consistent with this: in the Reisch case,[7] the CJEU applied the free movement of the capital without a cross-border element, in order to eliminate the potential restricting measures.

[1] See: Korom 2013, 11–25.
[2] Ibid.
[3] Pertek 2005, 131–135.
[4] CJEU, C-370/05.
[5] CJEU C-52/16, C-370/05.
[6] Dubouis & Blumann 2012, 650.
[7] CJEU C-515/99.

Furthermore, it is still a question of when the general principles of EU law and the relevant provisions of the Charter are applied in cases related to the operation of the property. However, the CJEU applied Article 17 of the Charter in the Commission v. Hungary case in contrast to the Segro case. This means that in this context, the Member State implements EU law.

The EU requirements on the restitution of property should also be mentioned as a unique case of Member States' transactions related to immovable property. It should be emphasized that similar cases were not brought before the CJEU However, questions for written answers about the restitution of property were raised, and the European Commission's answers can serve as guidance to bring clarity to the issue.[8] In general, EU law does not require Member States to give back the properties confiscated before the Member State acceded or paid any compensation. Despite this, if Member States decide after their accession – within the scope of ratione temporis – to introduce measures related to property restitution, the measures are a movement of capital according to the Commission, and in general,[9] the prohibition of discrimination based on citizenship will be applied.

Furthermore, according to the European Commission, if Member States[10] introduce in the scope of ratione temporis measures on the restitution of property, they shall consider the requirements set by the general principles of EU law and the ownership rights of the Charter of Fundamental Rights of the European Union's Article 17.

3. Land policy measures introduced by the Member States

In this area, we highlight the judgments in the Ospelt[11] and Festersen cases,[12] where the Court of Justice of the European Union examined the targets of the land policy in light of the free movement of capital.[13] We will return to the Kob Sia judgment and the related changes later.

In the Ospelt case, the CJEU examined an Austrian[14] rule: this specific regulation created a prior authorization system for the ownership and use of agricultural lands and forests. In CJEU's interpretation, the rule's goals, such as preserving the rural population and farming establishments, were legitimate. The CJEU mentioned that besides these goals, the rational use of agricultural lands and prevention of speculation in the land market were in line with, following the numbering of used then – Article 39 of the

[8] Of course, the CJEU has the monopoly of the EU law's authentic interpretation in this area. If there is no CJEU decision, the European Commission – as an EU entity – can influence the Member State's public authorities or courts with its statements. In particular, the court of the last instance should turn to the CJEU for a preliminary ruling.
[9] Question for written answer: E-011857/2013.
[10] Question for written answer: E-004016/2020.
[11] CJEU C-52/01.
[12] CJEU C-370/05.
[13] See: Kurucz 2015; Szilágyi 2018; Szilágyi 2015; Szilágyi 2017a; Szilágyi 2017b.
[13] CJEU C-452/01.
[14] CJEU C-452/01.

Founding Treaties, which, among other things, promotes the living standards of farmers. This means addressing the common agricultural policy's goals, besides the fundamental freedoms, thus, acknowledging the negative integration from the positive integration in the Member States' land policy. The CJEU adds that this article emphasizes agriculture's specific characteristics, social aspects, and existing natural and structural differences.

From these goals, the CJEU also concluded that the prior authorization system related to agricultural lands is in accordance with EU law. By contrast, EU law only allows prior notification in other areas. However, according to the CJEU, cultivation by the acquirer and local residency cannot be systematically required.

In the Festersen case,[15] Danish regulation restricted the acquisition of agricultural property, among others, by requiring ex-posts living in areas where criminal sanctions can be punished. This legislation did not comply with EU law according to the CJEU.

It should be noted that the CJEU stated that member states are allowed to introduce restrictions to prevent speculation and preserve rural populations. However, in practice, it is not easy for Member States to regulate this issue. This is because the negative integration form – related to fundamental freedoms – dominates case law, which is stronger than the public interest of the Member State. The principles developed by the CJEU also make it more difficult to justify Member States' restrictive measures or create a vague environment for Member States to regulate, as this case underlies these.

4. Restrictions related to secondary properties

In the judgment[16] of the Konle case, the CJEU examined Austrian rule on secondary properties, primarily in light of the free movement of capital. The Member State aimed to regulate the building plots to achieve rural development objectives because few building plots were in the area. The objectives are acceptable, but the introduced prior authorization system does not seem to be an appropriate and necessary means to meet these goals.

The CJEU's judgment[17] in the Ewald Burtscher case should also be mentioned. The Member State's regulation violated the free movement of capital, and thus EU law. The regulation annulled a property transaction in a secondary residency only because of a statement's late submission about the acquisition of the property.

5. The CJEU's case law on sanctioning misuse

In the judgment of the Segro case, the CJEU[18] examined the regulations of the seven- and three-year derogation period[19] on the acquisition of agricultural property and

[15] CJEU C-370/05.
[16] CJEU C-302/97.
[17] CJEU C-213/04.
[18] CJEU, C-52/16.
[19] The primary law allows Hungary to maintain the regulation existing on the signature of the Treaty of Accession, which – among others – does not allow other Member State's residents to acquire agricultural property.

the prevention of its circumvention in light of the free movement of capital. The particular rule of the Member State reserved the acquisition of usufruct rights of agricultural properties for close relatives. Moreover, it requires the annulation of these rights for legal persons and those who cannot provide close relatedness without provisions to compensate for economic loss.

The CJEU's judgment in commission/Hungary[20] is fascinating. Technically, the European Commission started an infringement procedure related to a similar regulation, in which incompatibility was decided in a preliminary ruling by the CJEU. The CJEU also examined regulations in light of the ownership rights set in Article 17 of the Charter.

However, the regulation concerned agricultural properties and the judgments mentioned above cannot be regarded as part of the case law on land policy.

6. Judgment[21] in the Vlaams Gewest case

A Belgian resident designated a Dutch resident as a specific legatee of her will. This included a forest area concerned with sustainable cultivation requirements set by Dutch authorities in light of Dutch law. It should be mentioned that Belgian law should be applied to inheritance.

When the Belgian resident passed away, the Dutch resident asked the Belgian authorities to exempt him from inheritance duties because the inheritance law made the forest areas, approved by the Flemish authorities, cultivated in line with sustainability requirements, free from the inheritance duty. The applicant's submission was refused, because the area could be found in another Member State. The concerned person brought the case to the Belgian courts because, from his point of view, this regulation violated the free movement of capital as it excluded the properties from tax exemption, that are in another Member State. The Belgian court decided that the concerned area was part of a sustainable management plan that met the requirements of Belgian inheritance rules.

The CJEU opined that inheritance rules belong to the free movement of capital if there is a cross-border element that cannot be disputed.[22] The CJEU pointed out the cross-border characteristics of environmental protection, which require the member states' shared responsibility. [23] However, this discrimination cannot be justified.

7. Judgment[24] in the XY/Finanzgericht Düsseldorf case

In this judgment, the CJEU decided on, among others, whether discrimination in the case of taxes on the transfer of immovable property is against the free movement of capital. The Member State's rule imposed more taxes on inheritance if foreign persons were concerned than inheritances that concerned at least one resident.

[20] CJEU C-235/17.
[21] CJEU C-679/17.
[22] Ibid. paras 16–17.
[23] Ibid. paras 25–26.
[24] CJEU C-394/20.

According to the case law, Member States' measures that limit the value of inheritances that belong to other Member States' residents are against the free movement of capital.[25] The CJEU decided based on its specific case law of tax related to the justification of restrictions by referring to the public interest.

8. Judgment[26] in the Serviatus case

Through this judgment, the CJEU examined the Member State's regulation of properties in an area of building policy and general economic interest in light of the free movement of capital.

In this case, a housing organization was concerned that it did not receive prior authorization to an investment in another Member State. The questions raised to the CJEU, among others, are intended to determine whether a housing organization shall gain prior authorization to invest in property building in another Member State.

Transactions related to the investment, use, or divestment of property located in another Member State belong to the free movement[27] of capital.[28] Case law considers all provisions in this case that can prevent persons from investing in property located in another member state, for instance, by requiring prior authorization.[29]

The CJEU referred to the case law on introducing prior authorization and concluded that these measures could restrict[30] the free movement of capital, even if the prior authorization does not discriminate whether an organization intends to invest[31] in its own or some other Member State.

The Dutch government justified the imposed restrictions on the housing policy objectives. The authorized organization should invest in projects representing housing policy interests, facilitating disadvantaged Dutch citizens to access housing by increasing supply. In general, the CJEU acknowledged that these measures serve the public interest and can justify the restriction of the free movement of capital.

The CJEU finds a prior authorization system's establishment reasonable for these purposes; however, the Member State's provision was not compatible with EU law because of the control of the negative integration form and the too broad margin of appreciation of the Member State's authorities.

9. Judgment in the UM/Finanzamt Villach case[32]

The judgment is particularly examined in the light of Regulation 650/2012/EU, agreements on the transfer of ownership rights in case of passing away, and the choice

[25] Ibid. para 32.
[26] CJEU C-567/07.
[27] According to the state of EU law development.
[28] CJEU C-567/07 para 20.
[29] Ibid. paras 21–22.
[30] Ibid.
[31] Ibid. paras 23–27.
[32] CJEU C-277/20.

of the applicable law. The case concerned land in Austria's territory, but succession proceedings started in Germany.

In the first question of the preliminary ruling, the CJEU gives an extensive interpretation of the agreement as to succession's definition in the Regulation, which takes the first step towards a more uniform EU system,[33] as it interprets all forms of property transfer extensively by inheritance. In contrast, the CJEU more narrowly interprets the other forms of transfers, which are not inheritance, as donations.[34] However, if donation becomes effective when the deceased passes away, it belongs in the scope of the regulation.[35]

10. Judgment in the Commission/Greece case[36]

In the procedure launched by the Commission, it was objected that the Member State's regulation does not allow exemption from inheritance duties for those who do not have permanent residence in Greece. The regulation has similar provisions for property acquired by the deceased's spouse and child. The Commission referred to case law; according to this, property inheritance is a movement of capital.[37]

The Greek government justified the free movement of capital's restriction with several arguments: the CJEU found the government's argument that persons who do not have permanent residency only live in the property for specific periods or use the property in other ways to be irrelevant. The CJEU also does not accept the government's point that exemption from duties is a condition of the heir's relationship with Greek society.

11. Judgment in the Staatssecretaris van Economische Zaken case[38]

The concerned person was a Dutch tax resident who owned land in the United Kingdom and intended to donate it to his son. According to Dutch law, donations such as this are entirely or partially free from duties if the property is in Dutch territory.

According to the case law, provisions on the free movement of capital shall be applied in deciding the tax requirements of the property's donation, except if all elements of the transaction are concentrated in one Member State.[39] The exception of duties related to inheritance law requiring that the property be in the Member State is also part of the case law.[40] A similar approach is followed on matters of donation.

[33] Ibid. para 33.
[34] Ibid. para 34.
[35] Ibid. para 35.
[36] CJEU C-244/15
[37] Ibid. paras 8–9.
[38] CJEU C-133/13.
[39] Ibid. para 18.
[40] Ibid. para 20.

The aim of the concerned regulation of the Member State is to prevent tax exemption in the case of inheritance, breaking up traditional Dutch lands, or damaging their unique character while using them to pay taxes. Thus, the rule aimed to preserve the Member States' beauty, which[41] includes[42] cultural history and heritage protection targets.

In the CJEU's interpretation, those who intend to donate a similar property in a different Member State cannot be considered someone in a comparable situation to those who would like to donate property in another Member State.

12. A paradigm shift in the judgment of the "KOB" SIA case

KOB is an agricultural company that belongs to German citizens and conducts agricultural activity in Latvia. Moreover, the Directorial Council consists of German citizens.

More companies which belong to German owners have a share in the company. The KOB contracted a sales contract of approximately 10-hectare of agricultural land in 2018 and requested the approval of the Member State's authorities, which was refused. The company turned to Latvian courts because the conditions of the authorization system are discriminative on citizenship and, among others, are not compatible with the freedom of establishment.

It should be emphasized that Latvian regulation allows legal persons to acquire agricultural properties. If the legal person is directed or represented by another Member State's citizen, Latvian law sets two more requirements to acquire the ownership of agricultural lands. The other Member State's citizen should be registered by the Latvian authorities, which, among others, includes that she/he intends to stay for more than three months in the Member State and have a general knowledge of the Latvian language, enough to hold a conversation.

Article 345 of the TFEU technically does not challenge this:[43] it is a decade-long practice that ownership autonomy cannot justify the derogation[44] from fundamental freedoms, but makes the Member State's regulation possible in the area.

The question raised before the CJEU is whether freedom of establishment or the free movement of capital should be applied. According to the CJEU's consistent case law, the free movement of capital should be applied in the case of properties. If the CJEU examined a member state's regulation in light of the free movement of capital, it should not be examined in light of the freedom of establishment. From this perspective, freedom of capital can be considered the most potent fundamental freedom. However, in this case, the CJEU referred to the Van der Weegen[45] judgment of 2018, according to which the CJEU only examines a Member State's rule in light of one fundamental freedom,

[41] Similar buildings or buildings built before 1850 are surrounded by parks or gardens and are under the regulation of heritage protection.
[42] Ibid. paras 24–25.
[43] CJEU C-206/19.
[44] Dubouis & Blumann 2012, 650.
[45] CJEU C-580/15.

if the others are secondary to this. In this light, the purpose of the particular regulation should be examined, as pointed out by the CJEU in the KOB judgment. The CJEU adds to the same judgment that the analyzed regulation belongs to the free movement of capital and contains the continuous agricultural use that belongs to the freedom of establishment, because it is considered a permanent economic activity in another member state.

According to the CJEU's interpretation, the KOB SIA case cannot be determined in light of the Member State's examined legislation's purpose if the freedom of establishment or the free movement of capital[46] is applied decisively.[47] For this reason, the CJEU examined[48] the case's factual basis[49] to determine which fundamental freedom should be applied.

The CJEU decided that freedom of establishment should be applied and not the free movement of capital because an economic company can acquire agricultural land in Latvia under the conditions that its representative or member proves their residency in a Member State and has a certain knowledge of the Latvian language.[50]

In the case of Van des Weegen et al., referring to the judgment of June, 2017, opined that, in cases where a Member State's measure considers more than one fundamental freedom, it should be examined in the light of one fundamental freedom if the circumstances of the case indicate that the other freedoms are secondary. The CJEU concluded that compared to other cases – like the judgment in the Segro case[51] – the case primarily belongs to the freedom of establishment, so the Member State's regulation shall be examined in light of this fundamental freedom.[52]

It should be mentioned that the CJEU mentioned the judgment in the Segro case[53] related to its case law on the free movement of capital, in which the member state referred to land policy objectives but the CJEU did not accept that. Furthermore, this decision is closer to the expiration of the derogation period on the land market for Member States, which acceded in 2004, and to the termination of usufruct rights than the range of the Member State's land policy. The CJEU did not mention the Festersen judgment, in which the concerned person purchased land for agricultural use.

The CJEU decided on the exclusive application of the freedom of establishment. However, it did not focus on the application of Article 18 of the TFEU, so freedom of establishment was strengthened compared to the former impactful position of the free movement of capital.

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[46] CJEU C-206/19, para 25.
[47] The CJEU adds that from the documents, the concerned person intended agricultural lands to use. The Member State's regulation is about the acquisition of agricultural land and aims to provide its continuous cultivation.
[48] CJEU C-206/19, para 25.
[49] CJEU C-375/12.
[50] CJEU C-206/19, para 26.
[51] CJEU C-52/16
[52] CJEU C-206/19, paras 27–28.
[53] From the community's perspective united by law, the CJEU's case law's consistency is essential. The CJEU puts a particular emphasis on this. From this view, the development mentioned above is not justified. See: Vauchez 2019; Navel, 2021.

The Court recalls its former case law; according to this,[54] the Member States' measures introduced in areas subjected to comprehensive EU harmonization should be decided in light of the secondary EU Act and not the primary law. Thus, case law indicates[55] that provisions of the Directive 2006/123 should be applied. Attention should be raised to the fact that primary law has a more powerful position in EU law than secondary law; the primary law gives the authorization to adopt secondary law measures.

The examined directive would draw a requirement to the Member State's legislator if it introduced an authorization system in the case of particular services. Therefore, it lists prohibited requirements for member states and introduces complete harmonization related to specific provisions of the Directive.

The Court finds that these criteria cannot be justified by Article 14 of Directive 2006/123 and the general system of the Directive related to the Member State's requirements.[56] This is demonstrated by the Rina Services[57] and others and Commission/Hungary[58] judgments.

The additional requirements examined by Latvian regulation can be applied to other Member States' citizens. Therefore, the provisions are against Articles 9, 10, and 14 of Directive 2006/123. For this reason, the CJEU added that the rule's compatibility with EU Law should not be examined in light of the free movement of capital.[59]

13. Conclusion

Regulation 650/2012/EU primarily concerns the authority in inheritance, the Member State's applicable law, the acceptance of the decision in inheritance cases, and the introduction of the European inheritance certificate. The related CJEU case law aspired to develop a unified EU system in the issues considered by the regulation. However, this secondary law act does not substantially influence Member States' margin of appreciation of inheritance, namely, in the case of agricultural properties.

This does not mean that the Member States' rules on the inheritance of agricultural properties are free from fundamental freedoms from EU control in the form of negative integration. As we have seen above, the control developed by the CJEU is applied in the case of all regulations considering the internal market, and the question remains as to which fundamental freedom is applied.

It should be mentioned that there are relatively few CJEU judgment on Member States' rules about agricultural property. However, this does not mean that internal market law would not be applicable. We do not know the CJEU's judgment on the inheritance of agricultural property. The examined CJEU judgments consider transactions related to property or inheritance duties. A specific control mechanism in this area can be derived from primary law and Member States' fiscal sovereignty.

[54] Ibid. para 30.
[55] CJEU C-205/07, para 33.
[56] Ibid. para 38.
[57] CJEU C-593/13.
[58] CJEU C-179/14.
[59] CJEU C-206/19, para 41.

The presented case law allows us to conclude that Member States' private law autonomy derived from Article 345 of the TFEU does not prevent the CJEU from examining Member States' rules or other decisions on the inheritance of agricultural property. It seems relatively clear that Member States cannot exclude other Member States' citizens from inheritance; thus, direct discrimination against citizenship is prohibited.

Other measures that do not realize direct discrimination based on citizenship and restrict fundamental freedoms would certainly be examined in light of the free movement of capital, and if agricultural use occurs in light of the freedom of establishment and the criteria set by Directive 2006/123. Nevertheless, we can undoubtedly conclude this after the first relevant judgment of the CJEU.

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The Austrian legal frame of the agricultural land/holding succession and the acquisition by legal persons**

Abstract

This article introduces the Austrian legal frame of the agricultural land/holding succession and the acquisition by legal persons. Regarding Austrian legislation, different legal definitions are open to juridical interpretation. According to the provisions of the Law on Agriculture, the Minister for Agriculture, Regions and Tourism is responsible to collect and process data about the situation of Agriculture and Forestry in Austria. The result is to be published in the 'the 'Green Report'.
Keywords: Austria, agricultural land, legislation, agriculture

1. Introduction

Austria is a federal state.[1] The power of legislation and execution matters belongs – due to constitutional provisions ('Kompetenztatbestände') – either to the Federal or to the provinces. For some competences, a shared responsibility in legislation between the Federal and the provinces is stipulated in the Constitution.

According to the general clause of Art. 15 Federal Constitution Law, the competence of 'agriculture' falls under the sole responsibility of the provinces, but there are also regulations in federal laws relating to agriculture and forestry. In summary, this is a cross-sectional legal matter.

Depending on the aim of the different law provisions, e.g. land employment law, tax law, law relating to inheritance of farms and forestland, subsidy law, social law, land transaction law, different definitions are in use who are open to juridical interpretation.

Nevertheless is the most common definition in Austria for the Agricultural Holding in line with the EU definition, written in Article 4 of Regulation (EU) 1307/2013:[2] *"An agricultural holding, or holding or farm is a single unit, both technically and*

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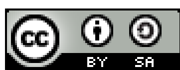
[1] Federal Constitution Law, Art. 2, Federal Law Gazette No. 1/1930.
All Austrian Laws that are named in this article are freely accessible under www.ris.bka.gv.at. Unfortunately, there is no English translation available for most of theme.
[2] Regulation (EU) No. 1307/2013 of the European Parliament and of the Council of 17 December 2013 establishing rules for direct payments to farmers under support schemes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economically, operating under a single management and which undertakes economic activities in agriculture within the economic territory of the European Union, either as its primary or secondary activity. The holding may also provide other supplementary (non-agricultural) products and services.“ [3]

Under the provisions of the Law on Agriculture (Art. 9),[4] the Minister for Agriculture, Regions and Tourism is responsible to collect and process data about the situation of Agriculture and Forestry in Austria. The result is to be published in the 'Grüner Bericht' – the 'Green Report'.[5]

According to the Agricultural Structural Survey 2020 there are 155,754 agricultural and forestry holdings in Austria. Compared to the year 2016 3.9% and/or about 6,300 holdings discontinued their activities. Compared to the last full survey in 2010 (AS 2010) the number of holdings had declined by about 10%.[6] The share of family farms in the management of the land used was 86%.[7]

Broken down by legal status gives the following overview:[8] (a) Physical persons: 85.111 holdings or 80% of all holdings; (b) Marriage unions: 13.503 holdings or 13%; (c) Communities of persons: 5.858 or 5%; (d) Partnerschips: 870 or 1%; (e) Legal persons: 1.228 or 1%.

2. The rules of holding transfer between generations, generation change and succession

2.1. The rules of transfer of agricultural land/holdings

Getting access to an agricultural holding is possible with one of the following: (a) Buy it. (b) Get a donation. (c) Marry the farmer. (d) Inherit it.

2.1.1. Purchase of land

The purchase of agricultural land is possible under provisions by province law. The legal transaction is subject of approval by provincial authorities. The main goal is to keep the land in agricultural use, to ensure a healthy farmer community. Due to this, the provinces made regulations about the following provisions: (a) Preverence clause for farmers as buyers and (b) self management of the land.

These provisions are checked in an administrative process, which may end with an approval or disapproval. The approval is condition for the registry in the land register. With the successfull registry the buyer is finally the legal owner of the land (Principle of intabulation).

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within the framework of the common agricultural policy and repealing Council Regulation (EC) No. 637/2008 and Council Regulation (EC) No. 73/2009, Official Journal L 347, 20.12.2013, p. 608.

[3] Eurostat 2019.

[4] Federal Law Gazette No. 375/1992.

[5] Grüner Bericht 2022.

[6] Ibid. 7.

[7] Ibid. 302.

[8] Ibid. 73.

2.1.2. Donation/transfer of assets during lifetime

The succession can be anticipated by legal transactions between living persons. The precautionary transfer of assets is often chosen to preserve family assets, to avoid inheritance disputes or to save on taxes. In most cases, properties, i.e. houses, land, condominiums are transferred to the donee during their lifetime. All other assets can also be given away (e.g. annuities, vehicles, savings accounts or cash). It is strongly recommended that the donor agree on consideration or securities in the contract.

Inheritance and donation tax has not been levied in Austria since 1. August 2008. With regard to the levying of real estate transfer tax, a distinction must be made between two facts, namely the transfer of a farm to a farm and the donation or inheritance of an agricultural and forestry business.[9]

If the donor still lives in the house or apartment when a house or apartment is handed over, he can retain the easement of a lifelong free right to live in the form of a right of use in return. In most cases, it is agreed that the person entitled to live only has to bear the operating costs and the consumption-dependent costs (e.g. electricity, gas and telephone). The buyer has to bear the maintenance costs (e.g. a due roof repair). Since 1. August 2008, no inheritance or donation tax has been levied. In the case of inheritance or gratuitous transfers (donations) of real estate, real estate transfer tax must still be paid. From this point on, however, there is an obligation to notify donations to the tax authority.

In the case of a handover without further consideration by donation during lifetime, the donation object is no longer part of the estate. So that a person who may be entitled to a compulsory portion does not 'fall over' entirely, they can request their compulsory portion (or the addition of their compulsory portion) from the donee: (a) If the recipient of the donation is one of the persons entitled to a compulsory portion, he must expect, without time limit, that another person entitled to a compulsory portion will demand the compulsory portion from him when the inheritance occurs. (b) However, if the donee does not belong to the circle of those entitled to a compulsory portion, then the compulsory portion or its supplement can only be demanded from him if the inheritance occurs within two years of the donation.

These regulations serve to limit the possibility of deliberate damage to those entitled to a compulsory portion. The donor has the option of agreeing consideration or securities in the donation contract.

The following contractual provisions can be included, for example: (a) Right of use: The right to live in the property handed over free of charge and to bear the operating and usage-related costs, but not the maintenance costs. (b) Usufruct: The right either to live in the property handed over or to rent it out and withhold the rent. (c) Ban on encumbrance or sale: Here, the donee may not encumber or sell the property without the consent of the donator. (d) Right of exit: The donator's right that the donee assumes certain obligations (e.g. to nurse and look after the donator in the event of illness, to run errands, to help with visits to the doctor or to buy medicines and to prepare meals).

[9] Urban 2009, 64–66.

If the donee fails to fulfill his obligations, the donator may hire a carer to do so and the costs are to be borne by the donee.

According to the legal situation since 1. January 2017, no more distinction is made between grants with a precautionary nature ('Vorempfang') and advanced payments ('Vorschüsse').[10]

Donations to a person who is not entitled to a compulsory portion at the request of a child entitled to a compulsory portion or of the spouse, donations to third parties (in this case only those made within two years before the deceased's death) are to be added to the estate as if the donation had not been made. Based on this 'increased inheritance', the claim of those entitled to a compulsory portion must be recalculated. This right applies only to donations made by the deceased at a time when he had a child entitled to a compulsory portion to the spouse or registered partner only for donations made during the marriage or during the registered partnership. At the request of a child entitled to a compulsory portion or an heir, donations to persons who belong to the group of persons entitled to a compulsory portion are to be added to the estate and offset against the compulsory portion of the person receiving the donation.

A legatee who would be liable to pay contributions can also demand credit. The crediting of donations to persons entitled to a compulsory portion can only be presented superficially in the following. If a donation is made to a person entitled to a compulsory portion during his/her lifetime, the donator can agree with the donee that the donation should or should not be offset against the donee's compulsory portion or inheritance portion. The donator can also subsequently waive this credit – for example in a will.

If donations were made during one´s lifetime, these can have an impact on the inheritance or compulsory portions. Such donations also have an impact on the compulsory portion of other persons entitled to a compulsory portion. For the specific calculation of inheritance or compulsory portions after the death of the donor, knowledge of the exact facts is absolutely necessary. If the existing legacy is not sufficient, the person entitled to a compulsory portion may request that the donee or legatee make up the rest of his or her compulsory portion. There are liabilities of the recipient of the donation.

The so-called 'contract of donation upon death' represents a middle ground between the drafting of a revocable will and a handover during one's lifetime. The donator promises to transfer certain assets to the donee in the event of his death. However, a contractual right of withdrawal is not permitted with this form of donation. The effect of the donation only comes into effect upon death. However, the donator is bound to this donation, he can no longer revoke it independently (because it is a bilaterally binding contract). The donation item is part of the estate and must therefore be included in the asset declaration or in the inventory of the estate on the assets and liabilities side. A deed of donation upon death must be concluded in the form of a notarial deed in order to be valid.

The obligation to notify only exists for donations between the living – i.e. not for donations in the event of death – and for donations made between the living (donations with a specific condition or a contractually agreed service in favor of a specific purpose),

[10] Art. 781 Austrian Civil Code.

namely for the following assets: (a) Cash, (b) Capital claims (e.g. savings accounts, bonds, loan claims), (c) Shares in corporations (public limited company, company with limited liability) and partnerships (open partnership, limited partnership), (d) Participations as a silent partner, (e) Businesses or sub-businesses to generate income from agriculture and forestry, self-employment or commercial operations and (f) Movable physical assets (e.g. motor vehicles, motor and sailing boats, jewelry, precious stones, etc.) and intangible assets (e.g. copyrights, concessions, usufruct rights, residential rights, goods vouchers).

The notification to the tax authority must be made within three months after receiving the donation. There is no obligation to notify under the Donation Notification Act[11] for inheritances or donations of real estate.

2.1.3. Marriage unions

About 13% of holdings are managed by marriage unions. In these cases, both partners are owner of the holding and share the management. To get married to a farmer (male or female), no special provisions (compared to the aquisition by purchase) are to be fulfilled.

2.1.4. Inheritance

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The provisions of the inheritance are part of the Austrian Civil Code,[12] which is a Federal Law. It regulates the intestate and testate succession.

The GCC includes all regulations about the legal succession of the assets of a deceased person. But it also means the subjective right to claim all or a fraction of the assets of a deceased person. The heir becomes the universal legal successor of the deceased, he acquires his property or a part of it by deed. If only one person is appointed as heir, he becomes sole heir (so-called "universal heir"). If several persons are appointed as heirs, they form a community of heirs as joint heirs.

Hereditary are: (a) All assets of the deceased (e.g. real estate, savings, jewelry or claims against other persons). (b) The debts of the deceased. Therefore, if the deceased had or is expected to have major debts, great care should be taken when accepting the inheritance (declaration of inheritance). (c) Possibly rights of access and disposal over internet profiles, social media, e-mail accounts and the like. (d) Certain rights and obligations linked to the person of the beneficiary, such as personal easements (right of residence, trade licenses or maintenance claims), are not inheritable.

However, there may be continuation rights for the estate or close relatives. Vocation to heir someone becomes an heir either through legal succession or through a testamentary disposition (by will).

In principle, according to Austrian law, everyone can regulate for themselves what is to happen to their assets after their death (freedom of testament). Possible forms for this are an inheritance contract or a will. In the event that the deceased has not made any arrangement, the statutory succession comes into force. This is based on the will of an

[11] Federal Law Gazett No. 141/1955.
[12] Judicial Law Collection No. 946/1811.

average deceased person and allocates the inheritable assets to the spouse and the nearest relatives of the deceased.

A certain balance is created between these two fundamental systems (freedom of testament and legal succession) through the right to a compulsory portion. On the one hand, the deceased could make a testamentary arrangement during his lifetime, regardless of the statutory inheritance quota. On the other hand, the deceased must nevertheless give certain close relatives a quota of his or her property. If he fails to do so, the right to a compulsory portion grants these close relatives, as persons entitled to a compulsory portion, the right to demand payment of a corresponding amount from the heir in the will.

As a last resort, i.e. if there are no testamentary or legal heirs, no life partner entitled to inherit and no legatee, the Republic of Austria has to appropriate the estate. One then speaks of an appropriation by the federal government (previously 'the state's right to escheat').

The GCC has no special provisions about agricultural holdings. There are special provisions for agricultural holdings in the Law Relating to Inheritance of Farms and Forestland – LIFF, a Federal Law,[13] and in some province laws.[14]

2.2. Transfer and the effect on ownership/land use (leashold) rights

On average, an Austrian holding has about 34% of agricultural land leased.[15] In a lease agreement, an item that cannot be used (e.g. a business premises) is made available for use for a specific period of time. The tenent is also permitted to use the property economically and thus make a profit from its use. This is the difference between lease and rent. A tenant is the owner and therefore enjoys property protection.

The legal framework for agricultural land lease is the Tenancy Act,[16] a Federal law. It´s a protection law in favour of the tenant.

The main topics of the law are: (a) Extension of the duration of the land lease[17] and (b) Decision on the lease[18] under the authority of a civil court.

2.3. Transfer and the effect on the pension of the transferor

The Farmers Social Security Act[19] regulates the areas of: (a) Pensions insurance,[20] (b) Health insurance[21] and (c) Accident insurance.[22]

[13] Federal Law Gazette No. 106/1958.
[14] More to this, see section 2.4.1.
[15] Grüner Bericht 77.
[16] Federal Law Gazette No. 451/1969; Holzer 2014, 359–366; Norer 2012, 703–716.
[17] Federal Law Gazette No. 451/1969 Art. 6.
[18] Ibid. Art. 11.
[19] Federal Law Gazette No. 559/1978; Holzer 2014, 437–444; Norer 2012, 821–859.
[20] Federal Law Gazette No. 559/1978 Art. 102.
[21] Ibid. Art. 74.
[22] Ibid. Art. 148.

The amount of the pension depends on the contribution period.[23] The amount of the contribution payment for the insurance depends on the taxable value of the amount of land use.[24] Both contributions are capped at a certain level.

The Social Insurance Institution for the Self-Employed is the provider of health, accident and pension insurance according to the Farmers Social Security Act. The social insurance institution for the self-employed is represented by the board of directors.[25]

If one of the transferors is not yet retired at the time of the planned handover, the following options exist.[26]

2.3.1. No transfer of holding for the time being

The retiring partner leaves his share of the holding to the other for management. The full contribution basis for the pension insurance is credited to this.

The advantage is, that the insurance of the remaining partner is the basis for the full contribution.

The disadvantage is, that the buyer side has to wait to get transferee status.

2.3.2. Holding handover and retention of usufruct rights

The transferor who still needs insurance periods is granted a usufruct (usability) right to the entire holding in the transfer contract until retirement.

The advantage is, that the transferor is insured for the full contribution basis. The buyer side becomes the owner/transferee status and can apply for housing subsidies.

The disadvantage is, that no real estate transfer tax exemption and no business start-up aid for young farmers might come to use. The transferee is not socially insured, except as a full-time employed child.

2.3.3. Handover of the holding and management contract

By concluding a management contract, joint management takes place with the transferee.

The advantage is that transferor and transferee are socially insured. The transferee can apply for housing subsidies and start-up subsidies.

The disadvantage is that no real estate transfer tax exemption come to use and there may be higher social security contributions than when the property is managed by a spouse.

2.3.4. Business handover and registration at the Social Insurance Institution for the Self-Employed

[23] Ibid. 106.
[24] Ibid. 23.
[25] Ibid. 16, 26.
[26] The following examples are taken from Lang 2020.

The transferor is insured at the Social Insurance Institution for the Self-Employed and the transferee gets as a full-time employee at a half of the insurance value.

The advantage is that the transferee is fully insured and the transferor is insured for half the insurance value. Housing subsidies, business start-up subsidies and real estate transfer tax exemption are generally possible.

The disadvantage ist that higher social security contributions are necessary.

2.4. The rules of succession of agricultural land/holding

2.4.1. Special provisions under Federal and provincial law

Although the Austrian Civil Code[27] regulates the intestate and testate succession on a general basis, it has no special provisions about the succession in agricultural holdings.

The special provisions for agricultural holdings are regulated in the Law Relating to Inheritance of Farms and Forestland – LIFF, a Federal Law.[28]

The main topic of the law ist the preservation of the medium-sized agricultural structure in the public interest by obtaining the holding. The principal heir is entitled to inherit the holding. It´s his duty to pay off the other heirs, under the provision, that the holding is still economically viable. In this case, splitting the holding (as heritage) to the numbers of persons, is not an option.

Additionally there are special provisions limited to the territory of provinces. For the province Tyrol, a Law on Special Relationships of Closed Holdings exists.[29]

For the province Carinthia, a Law Relating to Inheritance of Farms exists.[30]

Both laws are in common, that they regulate special provisions on the province level for the principal heir to ensure that the holding ist still enonomically viable.

For centuries, one of the most important instruments for the undivided maintenance of farms in generational change has been the so-called farm handover contract. With this contract, the farm is usually transferred to a child of the farm owner (transferor) by anticipated inheritance, in return for compensation for the departing children and granting of living and earnings rights (money and benefits in kind) to the transferor(s).

2.4.2. Handover contract

The handover contract is a so-called mixed contract, i.e. it contains elements of a donation contract as well as paid components, e.g. retirement condition like a cottage of estate reserved for use by parents.[31] The complex civil, tax and social law issues, including any consequences in the area of direct payments and subsidies, mean that appropriate

[27] Judicial Law Collection No. 946/1811.
[28] Federal Law Gazette, No. 106/1958.
[29] Law and Ordinance Gazette for the Princly County of Tyrol and the State of Vorarlberg, No. 47/1900; Holzer 2014, 209–215; Norer 2012, 717–734.
[30] Federal Law Gazette, No. 658/1999. Holzer 2014, 209–215; Norer 2012, 717–734.
[31] Lenoble 2009, 88–89.

professional advice is urgently needed before the conclusion of a transfer agreement. In Austria, such advice is offered in particular by the Chambers of Agriculture, which are legally established interest groups under province law.

2.4.3. Inheritance

During his lifetime, the deceased can largely freely dispose of what is to be done with his assets after his death. The right to a compulsory portion is an exception.

The will is a unilateral last will that can be revoked at any time and which a person appoints as an heir. It is the declaration of the deceased during his lifetime to whom the assets existing at the time of his death are to be transferred in full or proportionately. The heirs always have a share (e.g. in full, a third each or an equal share).

A legacy (codicil)[32] is a unilateral will that can be revoked at any time. Other dispositions can be, for example, the appointment of a guardian in the last will or the suspension of a legacy. In principle, the provisions on wills apply to codicils, unless the law provides otherwise.

One speaks of a legat (legacy) when someone should only receive certain things from the estate (e.g. the coin collection, vinyl records). The one who is so thoughtful is the legatee. The legacy is thus a testamentary donation without leaving an inheritance. A legacy can be arranged in a will, dispositions without appointment of an heir or an inheritance contract.

Forms of wills are: (a) Handwritten disposition (testament)[33], (b) third-party disposition (third-party will),[34] (c) oral will[35] and (d) public will.

Requirements for making a will: In principle, anyone over the age of 18 and of sound mind can make a will. The following groups of people can only testify in a so-called public will (i.e. orally in court or notarially), whereby the court or notary must satisfy themselves that they are capable of making a testament (i.e. a certain level of insight and maturity): Persons between 14 and 18 years of age.

The following groups of people cannot make a will: (a) Persons under 14 years of age, (b) mentally challenged, (c) mentally ill and (d) persons for whom the free formation of will is excluded for another reason (e.g. in the case of an acute intoxication).

The following applies to testamentary dispositions before 1. January 2017:

Persons for whom a guardian has been appointed for certain, individual or all matters due to a disability can only testify verbally in court or notary if this is ordered by a court.

This provision no longer applies to testamentary dispositions after 1. January 2017.

The provisions on wills apply to dispositions without the appointment of an heir, unless the law provides otherwise.

The testamentary freedom finds limits where a condition interferes with the heir's personal freedom of decision and lifestyle. A condition that applies pressure and coercion

[32] Art. 552 Austrian Civil Code.
[33] Art. 577 Austrian Civil Code.
[34] Art. 579 Austrian Civil Code.
[35] Art. 577, 581 Austrian Civil Code.

is usually ineffective. If a condition is formulated in the will, its content must be sufficiently specific that there is no doubt.

If the condition is not met, the recipient loses the allowance. It makes sense to appoint an authorised person who can sue for the fulfillment of the condition. But there are also incomprehensible, illegal or immoral conditions, such as: (a) a specific person is not allowed to marry or (b) a specific person is only allowed to marry a specific partner.

Such terms shall be deemed not to have been incorporated, as shall terms which are wholly incomprehensible or meaningless. However, the will remains valid.

Wills are unilateral last wills and, in contrast to inheritance contracts, can be changed or revoked at any time. The amendment or revocation can be made as follows: (a) Expressly in the form of a will. (b) Tacitly through the establishment of a New Testament (without mentioning the old). (c) By destroying the document (e.g. tearing it up, burning it, crossing it out).

The safest way is the revocation in the form of a will. This is particularly recommended if the will to be revoked is in the hands of the heir who is now to be replaced by another. The revocation might be entered in the Central Register of Wills of the Austrian Chamber of Notaries[36] or in the Register of Wills of Austrian Lawyers of the Austrian Bar Association. An earlier will is also overridden by a later valid will in the other provisions, unless the deceased stipulates otherwise in the later testamentary disposition.

The last will should always be summarized in a single will. Problems in practice regularly arise when duplicates are drawn up that are handed over to other people, since it is easy to forget such a duplicate in the event of revocation. It is sufficient to create an original, which should be kept by a notary, a lawyer or in court and registered in the Central Register of Wills of the Austrian Chamber of Notaries or in the Register of Wills of the Austrian Lawyers of the Austrian Bar Association. In this way, the will is kept safe, cannot be embezzled and can easily be changed at any time.

There are costs involved in drawing up a will by a notary or a lawyer. A one-time fee is charged for advice, professional drafting, filing and registration of a simple will in the Central Register of Wills of the Austrian Chamber of Notaries. This depends on the respective effort and is around EUR 300 to 500 for a simple will. There is no ongoing fee for the duration of the deposit. In the case of complicated wills that require one or more detailed discussions beforehand, it is advisable to inquire about the costs beforehand. The cost of filing a will that is written by yourself without legal advice can be EUR 100 plus cash expenses and tax. In principle, the fee for such services provided by a lawyer can be freely agreed. A one-time fee is charged for the registration of a will in the Register of Wills of the Austrian Bar Association. There is no ongoing fee for the duration of the deposit.

2.4.4. The probate proceeding

Probate proceedings are court proceedings conducted by notaries as agents of the district court. Notaries in this function are also called 'court commissioners'. In every inheritance case there is a probate procedure. The purpose of this procedure is to hand

[36] Art. 140c Law on Notarial Regulations, Reichgesetzblatt No. 75/1871.

over the estate to the rightful heir under judicial supervision, to secure the rights of minors involved and to monitor the fulfillment of the last will.

The legal framework are the Law on Non-Contentious Legal Proceedings,[37] the Austrian Civil Code[38] and the Court Commissioners Act.[39]

The notary must involve those persons who have party status. These are the people who have a legal interest in being involved in probate negotiations. A mere economic interest is not sufficient for this. The probate procedure is carried out either by the competent notary or by an 'inheritor'. This is any other notary or lawyer that all heirs agree on and give power of attorney to. The ruler of the heirs then carries out the probate proceedings in writing directly with the court. Certain procedural steps specified in the law are reserved for the responsible notary for completion.

The registry office that issues the death certificate sends a copy of this death certificate to the competent district court where the deceased had his last place of residence. As court commissioners, notaries are not generally bound by deadlines, but are bound by the instructions of the respective probate court.

Probate proceedings can be difficult and extensive in individual cases, so that the probate court needs further surveys to end the proceedings. In this case, the court commissioner is dependent on the receipt of the necessary information or the completion of the inquiries. Typically, each probate court will ask the court commissioner to make a report as to why probate proceedings are exceeding a certain length of time. If the court commissioner has the impression that one of the heirs is delaying the proceedings without justification and to the detriment of the other parties involved, he can set deadlines for individual steps. As a rule, however, he will try to bring about an amicable agreement. In the meantime, some notaries with the additional qualification 'mediator' are working in the local notarial offices. These helps resolve conflicts between heirs.

Competent authorities are the registry office and the competent district court.

The district court responsible for the death transmits a death notification to the notary public (also court commissioner) determined according to the distribution system. The notary now raises the family members (at a funeral home, at the death address or by consulting the municipality) and then sends (usually to the person who ordered the funeral) an invitation to record the death. This is issued to persons who might know about the personal and financial circumstances of the deceased. At the appointment, these conditions are recorded using a questionnaire and it is clarified which further measures are necessary. It is not necessary for all persons entitled to inherit to set up the death record. The court commissioner often only finds out who is party to the probate proceedings when the death is recorded.

When the death is recorded, further processing is discussed with the notary. The court commissioner also makes an electronic request to the Central Register of Wills or the Register of Wills of the Austrian Bar Association to find out whether there are testamentary instructions from the deceased. If a will has been registered, the notary or lawyer who will be in custody will be informed automatically. He sends the will to the court commissioner. If there are no assets at all and no dispositions are required, the

[37] Federal Law Gazette No. 111/2003.
[38] Judicial Law Collection No. 946/1811, Art. 531.
[39] Federal Law Gazette No. 343/1970.

probate proceedings are already over when the death is recorded. If a motor vehicle or trailer is registered in the name of the deceased, the person appointed to represent the estate must notify the registration office of the death of the registered owner. If the registration owner has died, the car insurance company must be consulted to ensure that the car can still be driven and that insurance cover is in place, even after the premium has been paid. To do this, the notary (as court commissioner in the specific probate proceedings) must be contacted so that any deregistration does not interfere with the rights of the other parties to the proceedings, mostly heirs or those entitled to a compulsory portion.

Upon completion of the probate proceedings, a declaration of inheritance will be issued. It records who is the heir and at what rate. The submission of a declaration of responsibility is necessary, for example, in the case of: (a) Entry in the land register if real estate assets (e.g. condominium) were present in the estate and (b) Liquidation due to the death of an entrepreneur or partner for termination at the tax authority and deletion from the commercial register.

As proof of universal succession, a declaration of responsibility with a final stamp must be submitted.

If the death record shows that the value of the estate does not exceed the liabilities, in particular the funeral costs, the probate proceedings are ended by a court order: So-called ´assets of the estate in lieu of payment´. The person who paid for the funeral is usually given the existing estate in lieu of payment, i.e. he or she is authorised by court order to dispose of the existing estate (regardless of whether the person concerned is also the heir).

If there are estate assets that exceed the liabilities, an inheritance procedure will be carried out. The court commissioner obtains the necessary information about the existing estate assets and thus gains an overview of the financial situation. The legal or testamentary heirs are invited to another appointment.

In order to be able to access the inheritance, a declaration of acceptance of the inheritance must be submitted. This is necessary because nobody can be forced to accept an inheritance. With the submission of a declaration of inheritance, however, one "inherits" not only the assets (property) of the estate, but also the debts.

There are basically two options for a declaration of inheritance:[40] (a) Submission of an unconditional declaration of inheritance. In the case of the unconditional declaration of inheritance, the heir is liable for all debts and also for the fulfillment of legacies with his own assets in an unlimited amount. The heir is liable even if he was unaware of the existence of these claims and even if the debts exceed the assets of the estate. Several heirs are jointly and severally liable for the debts, which means that the other heirs have to bear the loss if one of the heirs does not fulfill his obligations. The Advantage of an unconditional declaration of inheritance processing is that it is simple and inexpensive. In contrast to the conditional declaration of inheritance, there is no estimate of the movable estate assets here, instead of the inventory drawn up by the court commissioner, the so-called 'assessment declaration' occurs. This list of assets and liabilities drawn up by the notary forms the basis of the probate proceedings. The heir or heirs declare that, to the best of their knowledge, the list is complete and correct.

[40] Art. 799 Austrian Civil Code.

Real estate (immovable property) is generally valued at three times the assessed value. If a corresponding application is made, these will be evaluated according to the Property Valuation Act.[41] The submission of the unconditional declaration of inheritance is risky because of the threat of debt liability. It is recommended if you know the lifestyle and financial circumstances of the deceased and can be sure that no hidden debts come to light. (b) Submission of a conditional declaration of inheritance: By submitting a conditional declaration of inheritance, one can limit the risk of debt liability. The heir continues to be liable with his own assets, but only to a limited extent with the value of the assets of the estate and only proportionately according to his inheritance share. The value of the inheritance is determined by consulting experts and the court commissioner. An inventory drawn up by the notary takes the place of the declaration of assets. This type of inheritance is all the more to be recommended the less one knew about the circumstances of the deceased. If several heirs are involved, a so-called inheritance agreement can be made as part of the deed of inheritance.

This is especially necessary if there is a condominium in the estate. The condominium can only be shared equally by an individual or by two people forming an ownership partnership. Therefore, in the inheritance proceedings, a regulation must be made as to who should take over the apartment (possibly against payment of an advance payment to the other heirs). If minor heirs (under the age of 18 years) are involved, their share of the inheritance must be precisely calculated and secured. The competent guardianship court monitors this security. A waiver of the right of inheritance or the submission of an unconditional declaration of acceptance for minors is only possible with the consent of both parents and the approval of the guardianship court.

The inheritance proceedings are finally ended when the inheritance is handed over. The hearing court issues what is known as an injunction, which is a court order that includes the following: (a) Data of the deceased, (b) data of the heirs, (c) type of declaration of inheritance, (d) inheritance quota and (e) land registry arrangements (if real estate exists).

A disclaimer, to renounce the inheritance, is always possible. In particular, if the debts exceed the assets of the estate, a so-called waiver of inheritance should be declared. In this case, the assets are distributed. These will first be corrected by: (a) the costs of the procedure, (b) the rent accrued after death until eviction, (c) the cost of a simple funeral and (d) all other claims (possibly only with a quota).

If activities are necessary for the realization of the assets of the estate (e.g. clearing the apartment or selling a car), the court of hearings appoints an estate trustee who, with court approval, carries out these necessary activities. The purpose of the creditor's meeting is to provide the heir or trustee with an overview of the debt.

Creditors are requested by court order to register their claims within a certain period of time. The heir must satisfy claims that are registered in due time, although known claims do not have to be registered. Claims filed late are only to be taken into account to the extent that assets of the estate are still available despite the distribution. If you forget to indicate a part of the property to the notary, this can be assigned to one of the heirs at any time later by means of a supplementary treaty.

[41] Federal Law Gazett No. 150/1992.

Banks and credit institutes provide the notary with information at any time about inquiries regarding 'legitimate values', i.e. those that were in the name of the deceased (e.g. current or pension accounts, securities accounts in the name of a person, savings accounts in the name of a person, building loan contracts), as well as 'identified values' relating to the deceased (e.g. bearer savings accounts with password, provided that the deceased appears as an identified person). The banks are therefore obliged to provide the notary with comprehensive information about all legitimate and identified assets, regardless of whether they have been confirmed as part of the estate or not.

If the heirs are completely unknown, the court commissioner issues a so-called inheritance edict, in which the unknown heirs are requested to assert their claims within six months. The service is made by public notice in the edict file. If, despite all efforts, no heirs can be found, the Republic of Austria can ultimately apply for the transfer of the estate (escheat).[42]

If the heir is known, but not his whereabouts, a curator of heirs is appointed and an edict of heirs is also issued. If an heir cannot be traced within the six-month period, the procedure is continued with the other heirs and the heir trustee. The share due to the absentee will be kept for him after the end of the probate proceedings. However, the heir curator is obliged to carry out further investigations. His activity is only terminated when: (a) The heir could be found, (b) the existing assets were used up by the investigation costs, (c) it is established that the heir is deceased or (d) has been declared dead.

If a property is jointly owned by several people, they can do whatever they want with it as long as the co-owners agree. Each co-owner may independently pledge, bequeath or dispose of his share as long as he does not infringe the rights of the co-owners. If there are discrepancies between the co-owners, for example regarding the use of the property or even its sale, each co-owner can file a so-called divisional action with the court.

If the property is part of an agricultural holding to which the provisions of the Law Relating to Inheritance of Farms and Forestland – LIFF, a Federal Law[43] apply, a divisional action is not an option.

The notary performs his services in probate proceedings on behalf of a court. When it comes to the costs of probate proceedings, a distinction must be made between two fees: (a) The fee for the notary as a court commissioner is primarily based on the value of the estate assets and the scope of the proceedings. His fee entitlement is regulated in the Court Commission Tariff Act[44] and is determined by the probate court. (b) The court fee is 5 per mille of the pure estate assets, but at least EUR 77.

If there are properties in the estate, the right of ownership in favor of the heir or heirs must be recorded in the land register within one year of the end of the estate proceedings. If the heirs do not submit a corresponding application within one year, the court commissioner must submit the appropriate applications to the land register court in their place.

[42] Art. 750 Austrian Civil Code.
[43] Federal Law Gazette No. 106/1958.
[44] Federal LaW Gazette, No. 108/1971.

2.5. Infringement proceedings in connection with the rules of land/holding succession

Austria had the chance to make some experiences about aspects of real estate traffic law under European law provisions, interpreted by the European Court of Justice - ECJ. In most of the province laws about real estate traffic, the requirement about 'Self management of the land' was a content which was interpreted literally. E.g. a person (physical or legal) that was not working with his/her own hands on the agricultural land, was not allowed to succeed.

Austria became a Member of the European Union in 1995. In the course of joining the EU, Austria became a five-year transitional period granted for land acquisition restrictions. The end of this period was at the same time the starting point for the ECJ-Jurisdiction to the Austrian provincial real estate traffic laws.[45]

One of the more remarkable judgments of the European Court of Justice was C-452/01.[46] The ECJ considered the approval criteria of self-management with regard to those pursued goals of the Law on Real Estate in Vorarlberg,[47] among other things, only as not required if the acquirer of the holding does not self-manage the necessary guarantees regarding the maintenance of agricultural use of these properties.

The acquiring non-farmer must therefore ensure that the holding is (still) cultivated by a farmer (to fulfill the management obligation). If the non-farmer does not place any corresponding guarantees, it would not violate the infringe of the free movement of capital if the traffic permit is denied.

In other judgments related to the Tyrolean[48] and the Salzburg[49] Law on Real Estate the ECJ referred to a principle that the regulation of real estate according to Art. 345 TFEU[50] falls within the competence of the Member States. Regulations in this area must nevertheless be based on the fundamental freedoms. These are the benchmarks. In the trend-setting Case Ospelt, the ECJ went on to justify land acquisition restrictions through agricultural policy goals, that the preservation of viable farms and the promotion of a reasonable use of the available areas are goals in the social interest. This he derived from the programmatic and objectives of the Common Agricultural Policy in Article 39 TFEU, which are fundamentally addressed to the Union institutions.

Due to this, a restriction of real estate traffic does not in itself represent anything out of the ordinary. In Austria, with the friendly help of the ECJ, since the end of the transitional period,[51] there has been a development towards a basic transaction law that conforms to the internal market.

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[45] Leitner Ph 2018, 680–683.

[46] C-452/01, Ospelt and Schlössle Weissenberg Familienstiftung, preliminary ruling from the Austrian Administrative High Court, Judgment of the Court, 23 September 2003. Holzer 2014, 337–340; Norer 2012, 693–699; Kraft 2003, 959-963.

[47] Official Gazette, No. 61/1993.

[48] C-302/97, Konle, Judgment of the Court, 1 June 1999.

[49] C-515/99, Reisch et al, Judgment of the Court, 5 March 2002.

[50] Former Art. 222 EC-Treaty.

[51] In the course of joining the EU, Austria became a five-year-old Transitional period granted for land acquisition restrictions. The end of this period was at the same time the starting point for the ECJ-Jurisdiction to the Austrian provincial real estate traffic laws. Leitner 2018, 680–683.

3. The rules of acquisition (land/holding) by domestic and foreign legal persons

3.1. Legal conditions for the acquisition of land or a holding for a legal person

3.1.1. Purchase of land

The purchase of agricultural land is possible under provisions by province law. The legal transaction is subject of approval by provincial authorities. The main goal is to keep the land in agricultural use, to ensure a healthy farmer community. Due to this, the provinces made regulations about the following provisions: (a) Preverence clause for farmers as buyers and (b) self management of the land.

These provisions are checked in an administrative process, which may end with an approval or disapproval.

In principle, all province laws provide that certain property-related legal transactions in which foreigners are involved are too subject to approval. Such approval requirements relate to the transfer of ownership, the granting of building rights, the Granting of a usufruct, a right of use or an easement or the Granting of any other transfer, inventory (rent, lease) and the acquisition of company shares. The affected legal transactions are provisionally ineffective until the approval is granted. Entries in the land register are not possible without the approval being available, since this regularly constitutes a registration requirement. With the successfull registry the buyer is finally the legal owner of the land (Principle of intabulation).[52]

The legal framework of Austria for purchasing agricultural land apply in the same way to legal and physical persons. The constitutional provisions: (a) Freedom of property movement,[53] (b) inviolability of property[54] and (c) the principle of equality before the law[55] apply equally to both.

3.2. Experiences about the acquisition by legal persons

Real estate traffic for foreigners and leisure residences. The problem of leisure residences, e.g. foreign millionaires buy agricultural holdings in scenic areas like Kitzbühel/Tyrol, is not specific for foreignerrelated real estate traffic. The question of the admissibility or inadmissibility of the justification or use of leisure residences affects residents and non-residents alike, as the negative implications is located in the (unauthorized) use of the leisure residence as such and not in the person/company of the authorized user. Regardless of this, the province laws stipulate partly specific restrictions on the acquisition of leisure residences by foreigners to prevent evasion.

[52] Walzel von Wiesentreu 2009, 100–107.
[53] Art. 6 Basic Law on the General Rights of Nationals, Reichsgesetzblatt No. 142/1867.
[54] Art. 5 Basic Law on the General Rights of Nationals, Reichsgesetzblatt No. 142/1867. Art. 17 Charter of Fundamental Rights of the European Union, Official Journal 2016 C202, 389.
[55] Art. 2 Basic Law on the General Rights of Nationals, Reichsgesetzblatt No. 142/1867. Art. 20 Charter of Fundamental Rights of the European Union, Official Journal 2016 C202, 389.

The richer people are, the more legal persons are used for their economic handling. The use of nested enterprise structures with the participation of off-shore companies might not be illegal per se but these circumstances and the obvious intransparency are handicaps for the provincial control authorities and their approval procedures.

3.3. Documentation about the chain of owners

The ownership of land is in Austria registered in the land register. The Law on Land Registry[56] provides the legal framework for all real estate transfer procedures. The land register consists of:[57] (a) The main records and (b) The documents collaborating the records (e.g. purchase or donation contract, court decision).

Only with registration the change of ownership is valid.[58]

56 LLR, Federal Law Gazette No. 39/1955.
57 LLR, Art. 1.
58 LLR, Art. 4.

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Adrienn NAGY* – László LAURIK**

Sale of Agricultural and Forestry Land in Enforcement Proceedings in Hungary***

Abstract

In Hungary, special, complex rules apply to the auction of agricultural and forestry land. The legislator highlighted the sale of land covered by the Land Transaction Act from the powers of the bailiff, and an administrative body implements the auction of land. In practice, this solution requires the joint application of several pieces of legislation. The aim of this study is to present the auction process of land and to analyse the problems that arise in case law. We will discuss the latest judicial case law related to this topic. We place special emphasis on the presentation of Decision No. 12/2022 (VI.2) of the Constitutional Court, which will result in a major change in the future among the persons entitled to auction land.

Keywords: enforcement proceeding in Hungary, real estate auction, auction of agricultural and forestry land, acquisition of ownership of land

1. Introduction

Nearly 26% of Hungary's national wealth[1] is agricultural and forestry land, which means that the range of property changes related to agriculture is of paramount importance. The number of auctions conducted in connection with agricultural land in Hungary is estimated to be between 25,000 and 30,000 in the recent period.

As of 2014, Act CXXII of 2013 on the Acquisition of Agricultural and Forestry Land (hereinafter referred to as the Land Transaction Act) changed the rules of procedure for the auction of land: in the case of acquisition by auction in the framework of the judicial enforcement, insolvency or debt settlement procedure affecting the municipality, the territorially competent agricultural administration body must be contacted.[2] Auction can only be conducted by the agricultural administration body under Decree No. 191/2014 (VII.31). It follows that in Hungary, the auction of farmland does not have to apply to the auction of land by Act LIII of 1994 on judicial enforcement (hereinafter referred to as the 'Enforcement Act'), the independent bailiff is not entitled to carry out the auction of agricultural and forestry land.

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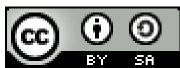
[1] Ministry of Rural Development; National Rural Strategy 2012-2020, 23.
[2] See more Csák & Hornyák 2014, 8–12.


https://doi.org/10.21029/JAEL.2022.33.93

First of all we have to define the legal concept of agricultural and forestry land. According to the interpretative provisions of the Land Transaction Act, land used for agriculture and forestry purposes: all parcels of land, regardless of the location of the land (inland area, outskirts), which are registered in the land register as arable land, grapes, orchards, gardens, meadows, pastures (lawns), reeds, forests and wooded areas, as well as parcels of land recorded as areas excluded from cultivation, for which the land register is registered as forest in the National Forest Stock Data Store.[3]

Unless otherwise provided by law, the rules governing the land shall also apply to the farm.[4] This is significant because this provision of the Land Transaction Act is the reason why the auction of farms has also been removed from the jurisdiction of independent bailiffs.

If, in addition to the subspecies registered in the land register as a fish pond, the parcel of land contains a subspecies registered in the cultivation branch specified in Section 5 (17) of the Land Transaction Act, the provisions of the Land Transaction Act shall apply to the entire parcel of land if the area size of the subspecies recorded in the cultivation branch specified in Section 5 (17) exceeds the size of the subsection registered as a fish pond.[5]

2. Rules governing auctions of the Land Transaction Act

In accordance with Article 35 of the Land Transaction Act, in the case of land auctions, the forced sale is not carried out by the independent bailiff, but by the agricultural administration body (government office) at the request of the bailiff. One of the extremely significant changes to the Land Transaction Act can be considered that the rules of electronic auction cannot be applied in the case of the land auction compared to the real estate auction in Enforcement Act. Furthermore, it is also a significant regulation, different from the Enforcement Act, that there is no place for the sale of the land outside the auction and the takeover by the applicant for enforcement during the procedure. Only those who prove their ability to acquire land property at the place and time of the auction with the documents establishing it may participate in the auction.

Of course, as in the case of other properties, some legal entities may also be entitled to pre-emption in respect of land used for agriculture and forestry purposes.[6] This right may be exercised by the rightholder at the auction on condition that he must also attach documents proving his right of pre-emption in person at the place and time of the auction.

[3] Point 17 of Section 5 of Land Transaction Act.

[4] According to 25 point of Article 5 of the Land Transaction Act, a farm is a parcel of land on the outskirts of the settlement of up to 1 hectare, to which, in addition to the land, a residential and economic building or such group of buildings established for the purpose of crop production and animal husbandry, as well as related product processing and product storage, or a parcel of land listed as a farm in the land register.

[5] Section 4/A of Land Transaction Act.

[6] See more Szilágyi 2006, 516–517; Leszkoven 2004, 393; Raisz 2017, 440; Olajos & Juhász 2018, 164.

As regards the right of pre-emption, it is important that Act V of 2013 on the Civil Code (hereinafter referred to as the "new Civil Code") Section 5:81 (5) from 15 March 2014 allows the exercise of the right of pre-emption of fellow owners during execution auctions. With this step, the legislator broke with the provisions of Opinion 9 of the Civil College of the Supreme Court, according to which, in the case of an execution auction, the co-owners did not have the right of pre-emption. The legislator, by referring to the new Civil Code, completely changed the practice laid down by the opinion of the Supreme Court, so the rules of the Enforcement Act had to be amended. At the same time as the entry into force of the new Civil Code, paragraph 4a was added to Section 123/A of the Enforcement Act governing the right of pre-auction, according to which there is no order and ranking of pre-auction rights based on different laws during auctioning.[7]

They are entitled to pre-emption under the Land Transaction Act: the State, in the case of commonly owned land a co-owner for at least 3 years, a land user for at least 3 years, a local neighbour (but in the case of land in a neighbouring settlement only in respect of parcels of land situated on the adjacent settlement border), livestock, producer of origin products and organic farmers, horticultural activities, seed producer, resident, operating a plant centre within a 20 km radius for 3 years peasant.

According to the provisions of the Land Transaction Act, the agricultural administration body conducting the auction examines the facts of the existence of the acquirer's ability to acquire the auctioneer or the right of pre-emption of the person bidding as the right of pre-emption, and whether the auction purchase does not result in a breach or circumvention of the restriction on the acquisition of property. It may also arise that several auctioneers entitled to pre-emption in the same rank appear as auctioneers at the auction. In this case, according to the law, the holder of the land at the choice of the agricultural administration body acquires ownership of the land, which raises further constitutional concerns, which is not the subject of this study.[8]

If the agricultural administration body approves the acquisition of ownership, it shall endorse the auction report at the same time as its decision is taken and send it to the bailiff. The agricultural administration body then transfers the full purchase price according to the auction report to the bailiff.

In the case of enforcement proceedings, if the agricultural administration body refuses to approve the acquisition in favour of the buyer or the auction fails, the agricultural administration body conducting the auction shall contact the bailiff in order to publish a continuous auction notice. If a bid is received for ownership of the land, the executor shall again contact the agricultural administration body in order to conduct an auction.[9]

3. Rules governing auctions of the Enforcement Act

Despite the fact that the Land Transaction Act and its implementing regulation lay down a number of significant rules on land auctions, there is also some provisions among

[7] Gyovai 2015, 42.
[8] See more Holló 2014, 44–49.
[9] Paragraph 7 of Section 35 of Land Transaction Act.

the sections of the Enforcement Act that are significant for the new owner of the land subject to enforcement.

First, however, the acquisition of the property by auction is presented as a method of acquiring property by an official decision.

The original nature of the acquisition of land at auction cannot be considered clear. Although the majority position in the Hungarian legal literature and the practice of the Curia also reinforce the original character of the acquisition at the auction. An example in court practice where the court determines the framework by which the auction results in the original way of obtaining: *"the auction results in an original acquisition mode only if the auction is made without the intention to sell, independently of the seller's right of disposal, in the interest of the executor, using official coercion."*[10] In one case, the Supreme Court made the following finding. The auction purchase is the original method of acquisition of property. The acquisition of property occurs by issuing the auction minutes. However, by destroying the auction, the auction buyer may lose ownership. There is no contractual relationship between the debtor and the auctioneer, therefore the debtor cannot enforce the rights arising from the contract against the auction buyer in a lawsuit, he can only use the remedies provided by the rules of the Enforcement Act.[11]

However, according to Gergely Légrádi,[12] the acquisition of ownership of the property at auction does not clearly constitute an original acquisition, since it mixes the characteristics of the original and derivative acquisition methods, and therefore he considers it a 'quasi-original acquisition mode' or a 'specific version of the original acquisition.'[13]

The original method of obtaining agricultural and forestry land by auction is questionable for several reasons. The Enforcement Act provides that the acquisition of real estate established during the auction procedure may not be subject to any other rights than the service of the land, the right of use in the public interest, the right of usufruct registered in the land register, the right of usufruct based on the law, even if it is not registered in the land register. An exception is made if the holder is responsible for the claims of the executor or the contract on which the entitlement is based arose after the mortgage charge.[14]

Furthermore, the Enforcement Act decides, as regards agricultural and forestry land, that if the land-use entitlement established under a contract on the property under enforcement exists for the benefit of a third party, the ownership of the new owner acquiring the land subject to enforcement shall be limited, in addition to the abovementioned rights, in addition to certain time limits, by the land-use entitlement previously established by the contract.[15] Thus, the new owner replaces the old one with regard to the subjects of the contract, but this state normally only exists for 6 months after the acquisition of the new owner. The contract shall not be terminated with a 6-month expiry if the new owner declares during this time that he has entered into an

[10] BH2008.239.
[11] Supreme Court No. Pfv. I. 21.165/2010.
[12] Légrádi 2003, 9–18.
[13] Gyovai & Kiss-Kondás 2016, 53.
[14] Paragraph (1)-(2) of Section 137 of Enforcement Act.
[15] Paragraph (3) of Section 137 of Enforcement Act.

agri-rural development aid from an EU or national source linked to the land, the condition of which is required by law for a specified period of time, in this case, the right to use land ceases to exist in accordance with the rules governing the termination of the contract establishing it and on a time.[16]

As a conclusion, it can be stated that agricultural and forestry land also have a special place among real estate in terms of the way they are acquired. In the case of agricultural and forestry land, auction acquisition is in no way a derivative acquisition, but only a special contractual method subject to warranty conditions, which is a specific variant of the original acquisition.[17]

According to the regulations of the Enforcement Act, it is possible to determine the value of the property in two ways: either the bailiff himself determines it on the basis of a tax and value certificate not older than 6 months, or the other way of establishing a value is to determine the value of the property on the basis of the expert's opinion of a judicial expert at the request of either party.[18] The valuation of agricultural and forestry lands requires special expertise, so in these cases it is accepted that the valuation is the responsibility of the land rating specialists or experts of the land registry.[19]

The real estate is not simply an asset, in most cases it satisfies the debtor's vital and housing needs. If the debtor loses his real estate, the last pillar of his existence is also lost.[20] At the same time, land is more than just real estate or means of production.[21] Land is a place of food production, so it is usually intended to provide not only the debtor, but also the vital needs of his environment. In view of this, the Enforcement Act expands the range of movable property exempt from enforcement: if the debtor is engaged in agricultural production on a life-like basis, he shall be exempt from enforcement of seed, agricultural machinery and equipment necessary for the cultivation of the debtor's land, a hauling animal and feed, a cow or other farm animal and the feed required for him for 3 months.[22]

4. The role of the government office in the auction of agricultural and forestry land

As of 1 August 2014, the county government office, as an agricultural administration body, has been selling agricultural and forestry land by auction in enforcement, insolvency or municipal debt settlement procedures. The bailiff is obliged to contact the county government office competent for the location of the land within 60 days of the establishment of the conditions of sale after the seizure of the land or forestry land for the purpose of conducting the auction.[23] The setting of the auction, the publication of the auction notice and the conduct of the auction are already within the competence of the county government office.

[16] Section 137/A of Enforcement Act.
[17] Nagy 2020, 16.
[18] Paragraph (1) of Section 140 of Enforcement Act.
[19] Olajos 2017, 105.
[20] Petkó 2017, 16.
[21] Fodor 2007, 109–110.
[22] Section 91 of Enforcement Act.
[23] Paragraph 1 of Section 1 of Decree No. 191/2014 (VII.31.)

In addition to conducting the auction, the government office has the power to issue the necessary certificates for participation in the auction. At the request of the client, the government office issues an official certificate that the client is a farmer or can acquire ownership in accordance with the Land Transaction Act. This official certificate does not give the right to acquire ownership of the land, it only certifies that the applicant can participate in the auction.

In view of the fact that the government office conducts the auction of land used for agriculture and forestry, administrative law also has an impact in the context of the auction. This was confirmed by the National Meeting of College Leaders of Civil Studies in 2019, when it answered the following question: If the agricultural land is auctioned in accordance with 191/2014 (VII.31.) government decree, the government office conducts it, in the meantime the implementation has been suspended, from which, due to the failure of the bailiff, the government office has not become aware within the deadline of Article 14 of the Government Decree, can the record of a successful auction be annulled in administrative proceedings in the framework of an appeal in accordance with Act CL of 2016, or can the enforcement court annul it on the basis of an enforcement objection submitted pursuant to Section 217 of the Enforcement Act? According to CKOT Resolution 04.16:10 of 2019, the decision taken at the auction must be made in accordance with the rules of Act CL of 2016 on general administrative order in the appeal procedure, within the framework of which the auction held by the government office may be annulled. Enforcement objections under the Enforcement Act may be lodged only against the action of the bailiff (and not any other body).

5. Process of auctioning agricultural and forestry land

The 2014 Government Decree regulating the auction of agricultural and forestry land was amended more than ten times after its entry into force. The change in the text of the legislation proves that this rule is constantly evolving, follows the changes in jurisprudence, and cannot be regarded as a clear procedural order.

5.1. Request for auction

If, during the judicial enforcement proceedings, the bailiff has seized agricultural and forestry land, within 60 days of the occurrence of the conditions for the sale of the land, the bailiff is obliged to contact the county government office competent for the location of the land for the purpose of conducting the auction. It is important that the value of the land and the amount of the lowest offer to buy are determined by the bailiff, which he is obliged to indicate in the request. In the request, the bailiff must also indicate if the debtor and the landowners have requested that the whole land be auctioned together. It follows from these legislative provisions that the tasks related to the preparation of the auction of agricultural and forestry land are divided between the executor and the government office.

In its decision of principle no. Kfv.37.696/2018/5, the Curia emphasized that the exact data content of the executive request is important because the government office is obliged to prepare and publish the auction notice with the same content as the

bailiff's request. In the real estate auction notice, a lien based on the law must be indicated on the basis of a request from the bailiff.

5.2. The auction notice

Within 45 days of receiving the request, the county government office will set an auction of the land with the auction notice. The content of the executive request is almost identical to the mandatory content of the auction notice, which also facilitates the work of the government office in the preparation of the auction.

The auction notice shall indicate the main data of the government office conducting the auction, the place and time of the auction, its identification number, the name of the applicant and the debtor, the title and amount of the main claims, the land register and land use data, the essential characteristics of the land, the main intended nature of the building or structure registered together with the parcel of land. The auction notice also includes the value of the land, the amount of the auction advance and the bid fee, the amount of the lowest bid to be made at the auction, the threshold for bidding. It should include a reminder to those entitled to pre-emption that the pre-emptive right of purchase is subject to participation in the auction, an awareness of the possibility of recording the auction on a picture and audio recording, the possibility of viewing a building or structure registered with the parcel of land for auctioneers, and other information concerning the auctioneers.

The auction shall be held in the office of the district office where the land is located. The date of the auction shall be determined in such a way that it must not be earlier than the 60th day from the date on which the auction was scheduled, but shall not be later than the 90th day following the date of the auction.

The auction notice shall be served to the applicant and the debtor within 8 days of its preparation; those who have the right to land registered in the land register; if the land is jointly owned, to the co-owner; for posting to the municipal, urban and metropolitan district notary according to the location of the land; the real estate authority competent for the location of the land in order to record the fact of the auction in the land register; the bailiff and the National Land Centre.

The auction notice shall be suspended for at least 30 days prior to the auction or at least until the 5th day prior to the auction. The auction notice shall be hung on the bulletin board of the government office, the mayor's office of the municipality competent for the location of the land, on the bulletin board of the real estate authority and the court implementing the enforcement proceeding. In addition, it must be published on the website of the government office. The applicant for enforcement or the debtor may request that the government office make the auction public in other ways at the applicant's expense. The latter option is not really possible in practice.

In practice, the question arises as to whether there is room for independent redress against the auction notice published by the government office? We agree that there is no place for an enforcement objection under the Enforcement Act, because it is an opportunity to appeal against the bailiff's action. The auction notice is already published by the government office, the procedure of the government office is no longer governed by Enforcement Act, but by administrative procedural law. There is an opinion that the auction notice can be challenged by an appeal under administrative procedural

law.[24] However, according to the author of this study, the solution followed by practice is the right one: the auction notice cannot be challenged by an independent appeal, but it can be challenged against decisions establishing the result of the auction in an appeal under administrative procedural law.

5.3. Conditions for participation in the auction

Land used for agriculture and forestry may be auctioned by the person who deposited the amount corresponding to 10 % of the value as an advance and paid the bid fee, which is an amount equal to 1 % of the value, but not less than HUF 2000 and not more than HUF 10000. The bidding fee will be the revenue of the government body. Only those who can present a certificate of transfer of these amounts to the auctioneer can enter the place of the auction. Compliance with Section 35 (3) of the Land Transaction Act and Sections 13-15 must be certified by an official certificate. Compliance with the condition of the Land Transaction Act for a distance of up to 20 km[25] must also be certified by an official certificate.

It is important to emphasize that the condition laid down in Article 5 (1) (d) of Decree No. 191/2014 (VII.31.) – which required the verification of residence within a range of 20 km – was declared by the Hungarian Constitutional Court to be unconstitutional by decision No. 12/2022 (VI.2.) and annulled. According to the reasoning of the decision, Article P (2) of the Hungarian Fundamental Law provides for the creation of a cardinal law for the National Assembly, which must provide, among other things, for the limitations and conditions for the acquisition of ownership of land. Based on the practice of the Constitutional Court, the requirement of cardinality does not preclude the detailed rules from being determined by a law with a simple majority or even by a lower source of law.[26] For this reason, the Constitutional Court had to assess whether the regulation on the acquisition of ownership of land by auction contains detailed rules of a technical nature in relation to the provisions of the Land Transaction Act, or whether it directly contains provisions of a material legal nature other than the rules of the Land Transaction Act and therefore requiring a cardinal legal level of legislation on the acquisition of land ownership as a result of Article P (2) of Fundamental Law.

The general conditions for the acquisition of ownership of the land are set out in the Land Transaction Act. Pursuant to Article 10 (1), ownership of the land may, in principle, be acquired by domestic natural persons and nationals of EU Member States. The Land Transaction Act distinguishes between farmers [Section 5 (7)] and individuals who are not farmers from the point of view of the right to acquire property, which is important for the area of land that can be acquired.

Section 35 of the Land Transaction Act also contains rules for the acquisition of land by auction. Pursuant to Section 35 (3), the auction may be attended by the person who certifies his ability to acquire property with documents at the place and time of the

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[24] Gyovai & Kiss-Kondás 2016, 57.
[25] Section 18 (1) e) point of Land Transaction Act.
[26] 24/2016. (XII.12.) Decision of Constitutional Court, Explanatory Memorandum (40); Most recently: 1/2021. (I.7.) Decision of Constitutional Court, Explanatory Memorandum (70).

auction. The right to pre-emption may exercise this right at the auction by attaching documents proving his right of pre-emption in person at the place and time of the auction. Pursuant to Article 35 (4), the agricultural administration body must examine whether the authorship of the auctioneer or the right of pre-emption of the person bidding as the right of pre-emption exists and whether the auction purchase does not result in a breach or circumvention of the restriction on the acquisition of property.

Based on the cited provisions of the Land Transaction Act, it can be concluded that the law clearly provides an opportunity for all natural persons in Hungary or other EU Member States to participate in the auction who can acquire ownership of the land in accordance with the provisions of the Land Transaction Act. It is also clear from Section 35 (3) that if the auction participant is also entitled to pre-emption (i.e. it is not necessary that all auctioneers are also entitled to pre-emption), then, in addition to certifying the general conditions for obtaining ownership of the land, he must also present as an additional requirement the documents establishing his right of pre-emption, and that he is entitled to pre-emption only personally.

Pursuant to Article 5 (1) of 191/2014 (VII.31.) Government Decree, the four conjunctive conditions for the acquisition of the ownership of the land at auction, and thus, of course, of the acquisition of ownership of the land by auction are that the auctioneer deposits 10% of the value of the land with the agricultural administration body no later than before the start of the auction; pay the bid fee; certify its ability to acquire property and make the necessary declarations in order to acquire ownership of the land in accordance with Article 35 (3) of the Land Transaction Act; and finally, to comply with the condition of section 18 (1) (e) of the Land Transaction Act for a distance of up to 20 km and certify it with an official certificate. The first two of these four conjunctive conditions are specifically financial and technical requirements for participation in the auction. The third condition under Section 5 (1) (c) is the general requirement for the acquisition of ownership of the land, referring back to the provisions of the Land Transaction Act. However, Section 5 (1) (d) lays down a special restriction on participation in the auction, when [referring back to Article 18 (1) (e) of the Land Transaction Act] it provides that only a person who is considered to be a farmer and whose place of residence or agricultural centre has been in the settlement whose administrative boundary is from the administrative boundary of the settlement in which the land is the subject of the sale may take part in the auction, it is not more than 20 km away on a road or on a private road not closed to public traffic. This provision excludes the acquisition of ownership of the land by auction for all those who are otherwise entitled to acquire ownership of land under the provisions of the Land Transaction Act, but are either not entitled at all to exercise the right of pre-emption in respect of the land to be auctioned, or, if they are entitled, the legal basis for it is not Article 18 (1) e) of the Land Transaction Act. This also means that Section 5 (1) (d) of the Government Decree does not actually formulate detailed rules of a technical nature relating to the auction, but fixes content and material legal requirements other than the general provisions of the Land Transaction Act for the acquisition of land at auction, as a kind of *lex special* regulation.

By the fact that the legislator did not fix in a cardinal act, but in a government decree, an additional material legal requirement for the acquisition of land ownership by auction, other than the general provisions of the Land Transaction Act, the cardinal legal

requirement arising from Article P (2) of the Fundamental Law was not fulfilled in respect of Article 5 (1) (d) of the Regulation. The Constitutional Court therefore found that Article 5 (1) (d) of the Regulation is unconstitutional and annulled it.[27]

According to the Enforcement Act, the executor, the deputy executor, the executor candidate, other employees of the executor, the executive office, a member and employee of the executive office may not participate in the auction. A legal entity or company in which a person or entity prohibited from auction has a majority influence. The executor, deputy bailiff, close relative and partner of the member of the executive office. The person belonging to the court of enforcement in the case and the debtor. A person or entity who claims to acquire the property because of the status of a claimant or co-owner, or if a separate law grants him the right of pre-emption in the event of the sale of the thing, shall not be excluded from the auction.[28] This includes the right to pre-purchase under the Land Transaction Act.[29]

According to the Land Transaction Act, no foreign natural person, a state other than the Hungarian state or any of its organs may participate in the auction.[30] Legal entities can only participate in the auction in exceptional cases, the main reason for this is the restrictive provisions of the Land Transaction Act. Currently, the Hungarian state can make a bid for a purchase without limits, with restrictions on the church, the mortgage credit institution and the municipal government.

5.4. Conducting the auction

At the beginning of the auction, the auctioneer shall communicate the terms of the auction, the starting price, which is the same amount as the estimate. He checks the preconditions for the participation of auctioneers, calls on those entitled to pre-emption to indicate the legal basis and rank of the right of pre-emption. The lowest offer to buy is at least 50 % of the estimate value, with the exception of the farm. In the case of farm, the lowest offer to buy is 70 % of the estimate value; but in the case of the recovery of a claim based on a contract with the consumer, a valid offer of purchase may be made at least at the same amount as the starting price, if this is the debtor's only residential property, his place of residence is in it and he was also in it for the 6 months preceding the initiation of the enforcement proceedings.[31]

The auction must continue as long as a valid bid is made. If there is no larger bid, the bidder closes the bid by declaring the amount three times and invites those entitled to pre-emption to exercise the right of pre-emption. If the pre-emptive person makes a statement of acceptance for the highest bid, he or she will be the auctioneer. If several pre-emptive holders make a declaration accepting an offer to buy, the auction buyer will be entitled to pre-emption belonging to the first rank group. If there are several people eligible for pre-emption in this rank group, the declaring person will decide by a draw conducted locally.

[27] Excerpt from 12/2022 (VI.2) Explanatory Memorandum of the Constitutional Court Decision
[28] Section 123 of Enforcement Act.
[29] Section 18 (1)-(4) of Land Transaction Act.
[30] Section 9 (1) a)-c) points of Land Transaction Act.
[31] Article 7 of 191/2014 (VII.31.) Government Decree.

In decision in principle no. Kfv.37.717/2019/10 of the Curia emphasized that in the event of the auction of land, the right to pre-purchase may act only in person pursuant to Article 35 (3) of the Land Transaction Act, and cannot exercise its right of pre-emption only by representative.

The first three bids reaching the minimum price are considered valid bids. If the first-place buyer does not transfer the purchase price within the deadline, the next highest auctioneer wins the auction. In this case, the person who fails to pay is charged for paying the difference between his own bid fee and the next bid fee.

The auction is unsuccessful if no one has made a valid bid for the land, the offered purchase price does not reach the minimum price at the repeated auction, if the buyer cannot acquire property on the land or the buyer has not transferred the purchase price in due date.[32] In the case of an unsuccessful auction, a repeated auction shall be scheduled, to which, as a general rule, the rules of the first auction shall apply. If the repeated auction is also unsuccessful, the agricultural administration body declares the auction unsuccessful. At the request of the agricultural administration body, the bailiff shall publish, in accordance with the rules of the Enforcement Act[33] a notice for the continuous auctioning of the land. After the publication of the notice, the offer to buy the land may be made in writing with the bailiff. Within 30 days of the receipt of the offer to buy, the bailiff shall again contact the agricultural administration body for the purpose of publishing the auction notice and conducting the auction.

6. Closing remarks

In Hungary, special, complex rules apply to the auction of agricultural and forestry land. The legislator highlighted the sale of land covered by the Land Transaction Act from the powers of the bailiff, and an administrative body implements the auction of land. In practice, this solution requires the joint application of several pieces of legislation.

In my opinion, this solution can be justified, on the one hand, by ensuring in practice the enforcement of the prohibition provisions on the acquisition of ownership of land, as laid down in the Land Transaction Act. On the other hand, this mixed solution also entails negatives: it increases the duration of the enforcement procedure; the auction of land takes place in a traditional way, with a personal presence, which represents a step backwards compared to electronic auctions. A rule insisting on personal participation in the auction on the part of the person entitled to pre-emption and excluding proceedings by proxy shall be regarded as archaic.

The constitutional court's decision 12/2022 (VI.2.) detailed in subsection 5.3 of this study can be considered as a positive. The practical problems surrounding the commonly owned land have thus been eliminated and the restrictive provisions of relation to the Land Transaction Act have been annulled.

[32] Gyovai & Kiss-Kondás 2016, 60.
[33] Section 159 of Enforcement Act.

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István OLAJOS*

Creation of Family Farms and its Impact on Agricultural and Forestry Land Trade Legislation**

Abstract

In the next article, I would like to summarise how the fundamental law on family farms, which entered into force in 2021, had an impact on the established rules of Transaction of agricultultral and forestry land in Hungarian law.

Keywords: Family Farms Act, legal acts on transaction of agricultural and forestry land, Article P of Hungarian Fundamental Law, primary producers, family holdings of primary producers, family agricultural company

1. Guideline and questions to be answered

I am looking for the answer to the advantages of the forms of enterprise governed by the Family Farms Act in the field of Transaction of agricultultral and forestry land. The Hungarian Fundamental Law P. Section.[1] In this article, it defines agricultural land, forests and water resources, biodiversity, in particular indigenous plant and animal species and cultural values as natural resources. For the protection of natural resources, the Fundamental Law provides for the creation of three fundamental laws.[2]

The first is the Transactions of agricultultral and forestry land Act adopted in 2013, which is itself a framework law, and can be amended by a simple majority of its detailed rules, which (DTAL I will shorten it) and a number of implementing regulations. Transaction of agricultultral and forestry land laws form the backbone of Hungarian agricultural legislation, and a number of decisions of the Constitutional Court other than civil law and decisions of the Curia legal unit are linked to the area of law. I refer to these laws as legal acts of transaction agricultral and forstry land.[3]

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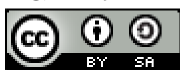
[1] See more: Bándi 2020, 7–8; Bándi 2019, 3–5; Csák 2012, 17–18; Fodor 2013, 331; Fodor 2018, 43–45; Fodor 2019, 39.

[2] See more: Csák 2018, 5–16; Fodor 2013, 331; Hegyes & Varga 2020, 17; Horváth G 2013, 213–234; Olajos 2015, 17–32; Szilágyi 2021, 211–215.

[3] See about the land transactions process: Alvincz 2013, 111–121; Andréka & Olajos 2017, 7–8; Anka 2015, 13–19; Bányai 2014, 62–71; Bányai 2014a, 7–33; Bányai 2016, 16–27; Bányai 2016a; Bobvos 2014, 1–25; Bobvos & Hegyes 2014; Bobvos & Hegyes 2015; Bobvos, Farkas Csamangó, Hegyes & Jani 2016, 31–40; Burgerné Gimes 2003, 819–832; Csák 2010, 20–31; Csák 2010a; Csák



The other piece of legislation analysed is the Family Farming Act, which is 2021. The legislation in force from 1 January 2021 and considered as the third cornerstone would be the agricultural holding law, which has not yet been established by Parliament.

Of the nearly 80 sections of the Family Farms Act, only the first twenty sections of the Act are in force, and the other provisions expired after the publication. Under this law, new rules have been adopted as regards the status of pre-producers, as well as the registration of pre-producers, the family holding of pre-producers and the regulation of the family agricultural company.

After presenting the types of family economy, in this presentation, I will summarize and group the rules where the law on approved family farms affected the two most important elements of the Transaction of agricultultral and forestry land rules on the Transaction of agricultultral and forestry land law and the law issued for its implementation, the DTAL

The Law on Family Farms, which will enter into force in 2021, has transformed the system of agricultural enterprises.

The smallest farms in the prehistoric category could escape conversion without a change in form, faced with a concept of prehistoric producers in a different way. Ancient farmers who were involved in part-time or second-time production in the management of a full-time farm could be transformed into family farms of first-time farmers.

The family farm, as a legal category, was chosen to pursue its activities as a family farm or family farm. Business companies, cooperatives and forest owners in agriculture could also be transformed with family and agricultural companies. Under the Family Farms Act, the primary producer, the natural person in the register of the Chamber of Agriculture, who carries out his own economic activity, independently, as a member of the family of original producers, and does not exceed a quarter of his total turnover.[4]

The primary producer's family holding consists of at least two production communities established by the farmer's member, which have no assets separate from the company's assets, within the framework of which the farmers carry out their activities together in their own holding, with the personal assistance of all members, in a coordinated manner. The rules of the civil law company should be applied to the family economy of primary producers as background legislation. A farmer could only be a farmer's family farm.[5]

& Hornyák 2013, 12–17; Csák & Hornyák 2014, 10–11; Csák & Hornyák 2014a, 139–158; Csák & Nagy 2011, 541–549; Csák & Szilágyi 2013, 215–233; Csák, Kocsis & Raisz 2015, 44–55; Fodor 2010, 115–130; Gyovai & Kiss-Kondás 2016, 64–77; Gyurán 2016; Hegyes 2009, 199–207; Holló, Hornyák & Nagy 2015, 73–87; Hornyák 2014, 62–76; Hornyák Zsófia 2015, 88–97; Hornyák 2016, 131–135; Hornyák & Prugberger 2016, 47–58; Keller 2013, 191–198; Kocsis 2014, 111–127; Kocsis 2015, 241–258; Korom 2013, 11–166; Korom & Gyenei 2015, 289–306; Kozma 2012, 350–360; Kurucz 2012, 118–130; Kurucz 2015, 120–173; Nagy 2010, 187–198; Norer 2013, 367–387; Olajos 2013, 121–135; Olajos 2014, 53–55; Olajos 2015, 17–32; Olajos 2017, 284–291; Olajos & Szilágyi 2013, 101–102; Orlovits 2015; Prugberger 2012, 6–7, 62–65; Papik 2017, 132–145; Raisz 2010, 241–253.; Raisz 2017, 68–74; Raisz 2017a, 434–443; Szilágyi 2015, 265–278; Szilágyi 2016, 1437–1451; Szilágyi 2017, 64–74; Szilágyi 2018, 182–196; Tanka 2013, 109–136; Téglási 2015, 148–157.

[4] Act CXXIII of 2020 3–5 §.

[5] Ibid. 6–11 §.

Although the family agricultural company is registered with family agricultural companies, the company is a family, business, cooperative or forest holding company which has at least two members and is in a chain of relatives. A person may be associated with only one family agricultural company at the same time. These three socialized family farms are listed in six places in the Transaction of agricultultral and forestry land Act and eleven places in the DTAL Act.[6]

2. Family Farms in Transaction of agricultural and forestry land Act.

There are six locations in the Transaction of agricultural and forestry land Act.

(1) Fourth paragraph of the Preamble, its function is to join forces, to increase local businesses between areas supported by the local land committee, which provide for the promotion of the Transaction of agricultultral and forestry land of these organizers at the forefront of principle. The text of the legislation is as follows: to strengthen agricultural society through the organisation of rural family economic communities and the growth of local businesses.[7]

(2) Transaction of agricultultral and forestry land Act XIII. Point (ac) of the second paragraph of Section 1. Its function shall be deemed to be used by the owner of ownership under the Transaction of agricultultral and forestry land Act if the actual user of the land is a family company of which at least 25% is a shareholder.[8]

(3) Point (a) of the fourth paragraph of Section 18 of the Transaction of agricultultral and forestry land Act. If you wish to exercise multiple pre-emptive rights at the same rank, the following order applies. This legal institution is called an internal pre-emptive order: First place is a member of the family agricultural company or member of an ancestral family farm.[9]

(4) Among the general rules on land use. The Transaction of agricultultral and forestry land Act 38. Paragraph 3a. It is considered to be a lawful transfer of rights of use to another part of which does not require the actual contribution of the renter, the institution of the sub-lease. The legislation is based on the following: Land's right to use the lease, favour land use and lease of forest land may be transferred to a family agricultural company in which the sub-licensing party is a member, with the consent of the party originally transferring it, for the purposes of favor land use. Release shall be without prejudice to obligations vis-à-vis the original rearranger of the right to use.[10]

[6] Ibid. 13–15 §.
[7] Act CXXII of 2013 Preamble (4).
[8] Ibid. 13. § point ac).
[9] Ibid. 18. § (4).
[10] Ibid. 38. § (3a).

(5) The Transaction of agricultultral and forestry land Act 42. Section 3, second paragraph, ac. Point 1.1.2. On this basis, it shall not be considered to be its use or release if the actual user is a family agricultural company in which the member of the contract user is to be transferred to the benefit of the company by the land leased by him.[11]

(6) The Transaction of agricultultral and forestry land Act is 46. If more than one person wishes to exercise a pre-lease right at the same rank, the following order applies (internal pre-lease order): member of a family agricultural company or member of a farmer's agricultural company.[12]

2.1. Classification of Family Farms mentions in TAL

(1) A Transaction of agricultultral and forestry land law, which is a substantial law, appears on a principle level, and in agriculture, the development of family communities and agricultural enterprises is used to strengthen agricultural society. This principle is referred to by the local bodies of the Chamber of Agriculture, which support the acquisition of a growing agricultural business in the authorisation procedure for this purpose.

(2) If you form a family farm company for the use of the land of a natural person in which you own at least 25% of the land, then the land use right granted to the company is considered to be your own use. This type of sub-lease to land use is not considered to be a sub-lease if sub-lease is free.

(3) In the exercise of pre-purchase and pre-lease rights, a member of the family holding of the family farming companies and producers using the family, must be preferred among several persons entitled to pre-purchase or pre-lease. This legal institution is defined as an internal pre-purchase or pre-lease order by Transaction of agricultultral and forestry land law.

3. Family farms in DTAL

The DTAL Act was established. Eleven places mention family farms. 1. 29. Section 1, first paragraph, J points provides that the data contained in the register of the family agricultural company or in the register of the family holding of the original farmers are to be considered as records transferred to the management body of the agricultural holding.[13]

Second mention is 50. The fourth paragraph of Section 4. The rent shall be payable by bank transfer on a domestic postal voucher unless the landlord is a family agricultural company in which the landlord is a member.[14]

The third mention is the Law. 59. Section 3. The function of a natural person may terminate the lease contract with immediate effect if his or her health deteriorates to such an extent, or there is a permanent change in his family and living conditions that hinders the fulfilment or makes it significantly difficult to fulfil the obligation arising from the

[11] Ibid. 42. § (3) point ac).
[12] Ibid. 46. §.
[13] Ibid. 29. § (1) point j).
[14] Ibid. 50. § (4).

lease. 4. Fourth mention of the Fetv. 60. Normal termination pursuant to the first paragraph of Section 1.

The lease agreement may be terminated 60 days before the end of the marketing year by the end of the marketing year by ordinary notice on the basis of the following conditions. When the lease agreement is concluded, the land which is the subject of the lease is jointly owned. During the duration of the contract, the joint ownership was terminated.

If the land corresponding to the share of the property was acquired as a result of the procedure for the termination of the common property as a separate property, provided that the landlord declares, at the same time as the termination of the contract, that the land is intended to be used by a farmer's organisation owned by himself, by a close relative, or by at least 25% of his or her close relative, or by a family agricultural company in which he is a member. And the last condition concerning the entire undivided common property was not signed by the lease agreement giving rise to the right to use one person, but its scope was extended as defined there.[15]

Next mention of the DTAL. 68. Section 2, concept of favor land use. On the basis of a favourite land use contract, the use and exploitation of land is transferred free of charge to its close relative under the Transaction of agricultultral and forestry land Act or, in the case provided for in the Transaction of agricultultral and forestry land Act, to a family and agricultural company.[16]

The same section, DTAL 68. section 2 In accordance with point (f) of paragraph 1 (f), the use of favors is terminated and, in the case of use to the family agricultural company, the membership of the family agricultural company, with the termination of the family agricultural company for any reason, shall cease to apply 30 day.[17]

Next mention is point 68/C of DTAL Act. A forestry management undertaking entitled to a forestry lease may conclude a forestry lease contract, except for the close relative of the owner of the tenants, that it is a family agricultural company in which the owner is a member.

It's a badge. 68D zakasza, as follows: Forest management integration contracts may be concluded by an appropriate forestry eligible professional undertaking, except that the integrator is a close relative of the owner or a family agricultural company in which the owner is a member.[18]

The DTAL 68E. the forest manager shall only be a professional enterprise included in the register of forest farmers, unless the forest manager is a close relative of the owner, or a family farming, company in which the owner is a member.[19]

[15] Ibid. 59. § (3).
[16] Ibid. 68. § (2).
[17] Ibid. 68. § (2) point f).
[18] Ibid. 68/C §.
[19] Ibid. 68/E §.

Section 91. of the DTAL Act In the case of the designation of the order of the forced users, the farmer's partner, operator of the livestock establishment, natural person using adjacent land, within natural groups of persons who have lived locally for three years, the order of selection as a coercive user shall be the following.A. family agricultural company, point B is a member of the family farm of ancient farmers.[20]

The DTAL. 109.. The lease agreement was concluded by Fétv until 31 December 2013. 60. In accordance with the first paragraph of Section 3, the following conditions may be terminated.

The first condition was that, at the time of the lease agreement, the land under consideration was jointly owned during the duration of the contract and that, during the duration of the contract, the common property was terminated.

The second condition is that the territory corresponding to the share of the property was acquired as a result of the procedure for the termination of the joint ownership by the new owner as a separate property, provided that he declares to the landlord, at the same time as the termination.

That he intends to use the land by means of a farmer's own close relative, a farmer's organisation owned by at least 25 percent of his or her close relative, or a family agricultural company in which he or she is a member.

In the ownership decision on the conclusion of the lease agreement, regardless of how the decision was taken, it did not participate, but is covered by it.[21]

3.1. Classification of Family Farms mentions in DTAL

This 11 point can be grouped into seven sub-sections.

(1) The registered data of the family agricultural company may be used freely by the agricultural administration. The information in the register does not need to be proved by the owners of the company if a person leases the land to his own family agricultural company.

(2) There is no need to pay the rent on a postal order or bank transfer if the rental tax is the owner and the landlord is the family agricultural company owned by him.

(3) A negative change in family circumstances after which the natural person's tenant cannot comply with the obligations arising from the lease agreement may result in the immediate termination of the lease contract. This provision, which was part of the Law on Family Farms before the entry into force of the Law, was the DTAL However, it does not cover social enterprises, so that, with special reasons of notice, only primary producers are allowed to live among the undertakings covered by the Family Farms Act.

(4) The Law on the Implementation of the Transaction of agricultultral and forestry land Act refers to the case of the division of a common land as a special, normal reason for termination, and to the whole part-owner's land, including the land of a self-property, being measured, was created by a contract of use that the owner does not sign it, but covers it. An example is the creation of a contract on the basis of service protection. In this case, the new owner may terminate the contract by the end of the marketing year with a notice period of 60 days if he wishes to use his own land, including

[20] Ibid. 91. §.

[21] Ibid. 108. §.

use as own-owned agricultural company. This rule shall apply only if the original contract of use is concluded in 2014. Date of birth: 1 January 2014.

The rules for contracts concluded before the entry into force of Transaction of agricultultral and forestry land legislation are simpler. In the event of the termination of joint ownership under any title, the normal grounds for termination may be invoked if the owner has not taken part in the decision necessary for the creation of the contract of use, the newly-owned owner, but has its scope, and has stated that he wishes to use the land of his own right. Self-use should also include the use of own-owned family farming enterprises. In that case, you may terminate the self-lease agreement 60 days before the end of the marketing year, with normal termination, with effect from the end of the marketing year.

(5) Next category is the concept of free land transfer to the family business. The basic condition of the contract is that the membership status of the family agricultural company ceases to exist as one of the cases of termination of the use of favors.

(6) The following discount category belongs to the special usage relationships of the forest area. The contract of most of the owners to manage their undivided joint ownership is named by the legislation in three forms. Forest management may take the form of forest leases, forest integration and forest management in a narrower sense. Forest leases are created for the use and benefit of forest areas. In the framework of forest integration, the integrator jointly manages its own and integrated forest areas and pays the integrated owners an allowance corresponding to the amount of forest benefits acquired in that year. The forest manager collects forest benefits in the name and for the benefit of the owner, for his own forest management activities. This is a business activity. For each of these three forms, it is stipulated that forest management is a specialised forest management undertaking.

The forest users are exempted from this qualification requirement and their owners are managed by forest ownership.

(7) If the owner or land user does not comply with statements made as terms of acquisition of ownership or land use. (Furthermore, he loses his status as a farmer, he makes the land work with someone else. Within a period of five years, it withdraws the land from cultivation, a final land use charge is due,) and it does not comply with the request made by the agricultural administration and body, and then payment of a fine, the determining agricultural administration may designate a compulsory user to receive land recovery. Forced recovery is for an entire marketing year and forced use as a farmer who uses the land may exercise a pre-lease right. In order to designate a coercive asset, the agricultural administration shall follow a designation order. Within the order, a large number of rightholders may justify an internal selection order. A large number of persons may be entitled to landowners, livestock keepers, natural persons using adjacent land, natural persons who have lived locally for three years. The first two places in the internal recovery order are the member of the family agricultural undertaking and the member of the agricultural undertaking of the farmer.

4. Conlusion

Prior to the adoption of the Act on Family Farms, only a few jurists explored the relationship between the Act on Transactions in Agricultural and Forestry Land and the Cardinal Act on Family Farms and the influence they had on each other.[22] Unfortunately, with the adoption of the Act on Family Farms, the Ministry of Agriculture used a special legal solution to harmonize the rules in the two areas.

The concept of an agricultural producer organization, which had previously been included in the terms of the Act on Transactions in Agricultural and Forestry Land, was replaced by one of the following terms in the Family Farms Act: a primary producer, a family farm of a primary producer, or a family farming enterprise.

The conceptual components of an agricultural producer organization are: legal personality, adequate organization, 3 years of agricultural or ancillary activity, agricultural share of more than 50% in income, 3 years' experience as a farm manager or agricultural qualification.[23]

The concept does not include any belonging to family farming or belonging to a family. Because the definitions of the two Acts greatly differ, many organizations may lose their special status as their existing contracts expire.

The change in the Act on the Transaction of Agricultural and Forestry Land's provisions will become prominent for a significant part of agricultural producer organizations after their current contracts expire. In many of their cases the difficulty of establishing a family character raises the issue that the regulation itself infringes acquired rights.

[22] Kurucz 2012, 118–132.
[23] Concept of agricultural producer organization. Nemzeti Földügyi Központ 2022.

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The Conditions for Carrying out Agricultural Activities in the Operation of Social Farm – A Comparative Legal Analysis of the Issue of Agricultural Land Ownership and Land Use**

Abstract

The author intends to analyze an important issue in connection with the operation of social farms in Hungary, namely the issue of land acquisition and land use by legal persons providing social farm services. As the Hungarian regulations restrict land acquisition by legal persons, they exclude social enterprises providing social farm services from this possibility. This restriction makes the operation of social farms difficult. This article examines the respective regulation of four other countries in comparison with the Hungarian, and then advances de lege ferenda proposals for Hungarian regulation to allow and facilitate social enterprises providing social farm services acquiring land ownership or using the land.
Keywords: social farm, land ownership, land use, acquisition by legal persons, restriction

1. Introduction

The concept of social farms is still unknown to many in Hungary, despite the fact that social farms have existed for more than ten years, and in other European countries, the roots of the model lie further back. The social model is seen as an appropriate alternative to innovative, multifunctional agricultural solutions that 'return' to the green environment, exploiting and using its benefits to empower people with mental illness, physical disabilities, disadvantages, or other problems who are unable to improve their lot and situation on their own and thus need help. It serves as an optional model in a society in which public health and social services do not exist or are inadequate.[1] In a special way, the farm offers opportunities for healthy people, for whom the farm is the place of learning. They can learn about farming, obtain training through farm work, and help them (re)discover rural life. Therefore, social farms are of social and economic importance. Its social importance is due to the fact that it affects a large proportion of our society, as it improves the mental health and employment opportunities of disadvantaged people. Its economic importance lies in the fact that the members of the

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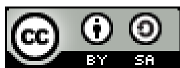
[1] Lanfranchi 2015, 711.



target group carry out agricultural activities on the farm, and the farm produces for the market as well, which also provides them with employment.

The cornerstone of the social model is the farm itself, which provides the skills development, rehabilitation, and integration of people using the farm's services in a safe and restorative green environment.[2] However, social farms go beyond traditional farms in several ways. They broaden and deepen their activities and networks of relationships. In addition to agricultural activities, their role extends to a number of other functions, such as social, societal, and ecological. For example, a social farm integrates (socially and in terms of employment) and provides employment for disadvantaged people, preserves traditions, cares for the countryside, and so on.

The social farm model started to operate from the bottom up in Hungary without a legal framework and national recognition. Therefore, the legal framework needed for the complex operation of the model is missing. For continuous effective operation and to become a legally regulated model, legislation is needed to respond to this existing model. In connection with the regulation of the model, there are several issues that shall be covered, such as the determination of the concept of social farm, organisational framework of the farms, and national recognition. One of the pressing problems in the operation of social farms is the issue of land acquisition and use. In the following, my aim is to examine the Hungarian land ownership and land use situation and identify the issues related to the operation of social farms. I use the method of comparative law, as I examine and compare the regulation of Hungary with that of four foreign countries.

2. The Hungarian regulation

In Hungary, one of the major problems in the operation of social farms is that the basic condition for carrying out agricultural activity is the ownership of agricultural land[3] or at least its possession and use; therefore, either the acquisition of ownership or tenant

[2] Rácz, Hayes & Kajner 2015, 22.

[3] Social farms use agricultural land to carry out agricultural activities (István Olajos summarises the extensive research on agricultural land as a natural resource in Olajos 2018). The protection of agricultural land (about which see Téglási 2012, 449–460.; Téglási 2015, 269–288.; Csák 2018, 5–18.; Orosz 2018, 178–191.) is also a priority in our Fundamental Law provided for in Article P. Article P (1) of the Fundamental Law lists natural resources in an exemplary manner, with special emphasis on the protection of agricultural land, which refers to its prominent significance among natural resources (Bobvos et al. 2016, 32.). This was already expressed in 1941 by Károly Ihrig, who described land as the nation's most valuable treasure, stating that 'land is a national treasure' (Ihrig 1941, 241.). Moreover, Ágnes Czine, judge at Constitutional Court, also refers to agricultural land as a priority constitutional interest, a natural resource under priority protection (Ágnes Czine's own opinion as a judge at Constitutional Court to Constitutional Court Decision No. 27/2017. (X.25.) [106]). In my opinion, this constitutional protection of agricultural land in fact expresses its relevance, the priority of its protection. I also consider this kind of protection necessary. On the one hand, agricultural land protection is essential in a country where agriculture plays an important role in the economy, taking into account its limited quantity, and, on the other hand, in Hungary agricultural and forestry land accounts for a relatively high percentage of the total national wealth (around 26%).

status is needed. This problem arises in the case of the so-called *"target group works on the own farm of the assisting organisation"* solution, when the organisation providing the social farm service provides the farm services itself, including agricultural. The most obvious solution would be for these organisations to be able to host the target group independently on land it owns or uses. However, under the current land regime,[4] only a limited number of people are entitled to own or use agricultural land.

In terms of ownership,[5] under the Land Transaction Act, ownership[6] of land may, as a general rule, be acquired by a resident natural person and a national of a member state who is[7] a farmer[8] by way of the means[9] and subject to the size limitations[10] provided for in this Act.[11] Legal persons – including unincorporated organisations – whether resident in Hungarian, in another member state, or in a third country, however, are not covered in Hungary,[12] with some exceptions.[13] In other words, social enterprises providing social farm services are not entitled to own land. The legislative objective of this restriction – based on professional needs and scientific knowledge and views[14] – is to support the acquisition of land by professional farmers, which helps to meet the recognised and reasonable land needs of farmers and exclude speculative land acquisition[15] and the resulting uncontrollable complex chain of ownership and excessive land possession limit (land concentration).[16]. Furthermore, another important aspect of the prohibition-protection provisions is that land is a finite resource owing to its specific natural and material characteristics, as it is a natural object of limited availability, cannot be reproduced, and cannot be replaced by other goods.[17] Finally, efforts are also included

[4] According to Tamás Prugberger's classification, the Hungarian land transaction regulation belongs to the "comprehensively regulating bound systems," characterised by the fact that it contains several restrictive provisions in relation to land traffic. See Prugberger 2015; Szilágyi 2017, 109.

[5] About the personal restriction of the Land Transaction Act see Anka 2021, 48–52.

[6] Csák, Hornyák 2013, 8.

[7] Olajos 2013, 121–135.

[8] Domestic natural persons and EU nationals, other than farmers, may acquire the ownership of land if the size of the land in their possession does not exceed one hectare together with the land proposed to be acquired.

[9] In principle, contracts for the transfer of ownership shall be approved by the agricultural administration body according to § 7 of the Land Transaction Act, unless otherwise provided for in it. See Anka 2021, 103–108.

[10] According to §16 of the Land Transaction Act, the land acquisition limit is 300 hectares, the land possession limit is 1,200 hectares, and the preferential land possession limit is 1,800 hectares.

[11] Csák, Hornyák 2013, 8.; Hornyák 2015, 91–93.

[12] On the regulation of cross-border land acquisition by legal persons see Szilágyi 2015, 91–93.

[13] Exceptions include: the Hungarian state, a listed church or its internal legal entity in certain cases, a mortgage loan company, or the local government of the municipality where the land is located in certain cases.

[14] On the evaluation of the provisions of the Land Transaction Act see Prugberger-Téglási 2018, 74–77.

[15] The justification of § 10 of Land Transaction Act.

[16] Olajos, Andréka 2017, 422.

[17] Constitutional Court Decision No. 35/1994. (VI.24.) [III.2.]

in the restrictions of maintaining the rural population,[18] improving the conditions for farming and agricultural services, supporting small- and medium-sized farms, encouraging viable and competitive agricultural production, and promoting sustainable land use.[19] Despite these objectives, the categorical ius strictum prohibitions are considered by the European Commission a restriction on the free movement of capital,[20] and therefore contrary to EU law.[21;22] The principle of the free movement of capital, as in the case of fundamental freedoms in general, may be restricted in accordance with the principles of necessity, proportionality, and non-discrimination,[23] among which the European Commission has specifically expressed concern that the prohibition on land acquisition by legal persons is not proportionate.[24] The Commission also considers that there are less restrictive provisions.[25] Furthermore, other restrictive provisions make it difficult for organisations to provide social farm services to acquire land.

In addition to restrictions on the acquisition of land, the acquisition of the right to land use[26] is restricted[27] under the Land Transaction Act. In principle, it can be acquired by farmers and agricultural producer organizations.[28] Although an agricultural producer organisation[29] may be a legal person or an unincorporated organisation, it is not excluded from the use of land. However, this kind of organisation must also meet certain

[18] On the changing importance of the concept of rural population see Szilágyi 2018a, 485–502.
[19] See in the introductory objectives of Land Transaction Act.
[20] According to Ágoston Korom, the provisions of European Union law can be divided into negative and positive integration rules, depending on how they shape the scope of land use regulation for Member States. He classifies provisions restricting the free movement of capital as negative integration rules (alongside restrictions on the free movement of persons). See Korom 2013, 14.
[21] Under Article 38 (1) of the Treaty on the Functioning of the European Union (TFEU), EU law covers agriculture and trade in agricultural products, including trade in agricultural land, including within it the internal market.
[22] It is worth noting that, in addition to the relevant case law of the Court of Justice of the European Union (CJEU), several other EU institutions have published documents that can be interpreted as soft law documents in relation to national land acquisition rules. For more details on the case law of the CJEU and soft law documents see Csák, Kocsis & Raisz 2015, 38–40; Szilágyi 2018b, 69–90.
[23] Commission Interpretative Communication on the Acquisition of Farmland and European Union Law (2017/C 350/05) point 2 b).
[24] Land acquisition restriction can be considered proportionate if it serves the protection of a legitimate public interest, including the prevention of excessive land speculation, the preservation of farming communities or the maintenance and development of a viable agricultural economy. See the Commission Communication 2017/C 350/05, introductory part.
[25] Olajos, Andréka 2017, 423.
[26] About the provision of land use see Csák, Hornyák 2014a, 8–12.; Csák, Hornyák 2014b, 3–10.
[27] § 40–59 of Land Transaction Act.
[28] § 40 (1) of Land Transaction Act.
[29] The concept of agricultural producer organisation is determined by §5 point 19. of Land Transaction Act.

conditions.[30] In the case of the right to use farmsteads, the law is more permissive, as it can also be acquired by non-farmers and legal persons not qualified as agricultural producer organisations,[31] but in this case additional conditions shall be applied. Furthermore, other organisations may acquire land-use rights under special conditions. Another exception has existed since January 1, 2021, as primary agricultural producers can use the land without right of use under the Act of Family Farms.[32] A complicating factor for both the acquisition of ownership and the use of land is that the registration of farmers is conditional on proof of appropriate professional qualification or experience and a certain turnover, while in the case of land use by agricultural producer organisations, the registration also depends on a certain turnover.[33] However, these provisions of the Land Transaction Act are justified by transparency and controllability.[34]

3. The regulation of foreign countries

Comparing the Hungarian regulation with that of other EU Member States – namely, the regulation of the UK, the Netherlands, Austria, and Italy – we do not find restrictive provisions similar to those in Hungary. Legal persons may acquire land ownership and the right to use it de iure. These countries also have a restrictive mechanism[35] that, if not directly but indirectly, limits the acquisition and use of land by legal persons. In the following, I will compare the English, Dutch, Austrian, and Italian regulations with the Hungarian with a primary focus on land acquisition, since the main difficulty in Hungarian regulations is the prohibition prevailing in this area. On this basis, I will make de lege ferenda proposals for the reform of Hungarian regulations.

The United Kingdom has very permissive legislation, and there is no specific legislation for the acquisition of agricultural land[36;37] The real estate market (including the agricultural land market) operates according to the free market principle with no state

[30] The conditions can be found in part in the definition of agricultural producer organisation (§ 5, point 19 of Land Transaction Act) and in §§ 41–43 of Land Transaction Act.

[31] § 40 (5) of Land Transaction Act

[32] Act CXXIII of 2020 on family farms (Act on family farms)

[33] § 5, 6 of Government Decree No. 38/2014 (II.24.) on the detailed rules for registration of farmers, agricultural producer organisations and agricultural holdings.

[34] Justification of § 41 of Land Transaction Act

[35] The European Commission has launched a comprehensive investigation into the land transaction regulations of the countries that joined the EU in 2004, including Hungary, and has also launched infringement proceedings against Hungary – the Commission accepted the justification for some restrictive provisions, but for example is still discussing the ban on land acquisition by legal persons. However, the Commission's investigation and proceedings have been challenged by a number of interested parties on the grounds that the Commission distinguishes between the legislation of the previous Member States and of the Member States that joined in 2004, where similar grounds are used to justify restrictions on land acquisition. See also Szilágyi 2015, 92–93; Korom, Bokor 2017.

[36] There is on.ly one act on compulsory land acquisition: Acquisition of Land Act 1981

[37] The general, the Agricultural Act of 1947 provides for regulatory subject matters in the field of agriculture but does not include land acquisition or land use. See Agriculture Act 1947.

control or interference in the sale of land, including acquisition by legal persons.[38] The only limitation is that a person acquiring land above a certain value must pay tax.[39;40] This permissive land acquisition regime has led to land grabbing, which has not yet been legally regulated but could cause significant problems for the UK land market in the future.[41] Agricultural leasehold, however, is already regulated in the Act of 1986 on agricultural holding[42] (applies to leases concluded before September 1, 1995) and in the Act of 1995 on agricultural leasehold[43] (applies to leases concluded after September 1, 1995); however, these acts also do not contain strict provisions. These acts limit leases by neither legal persons nor foreigners (natural or personal). Neither act determines the maximum duration of leasehold.[44] Generally, leases concluded for more than 30 years are rare; typically, they have been concluded for less than 10 years.[45] Overall, in relation to legal persons, land acquisition and leaseholds are not limited.

Similar to English regulations, the Dutch land acquisition regime is also permissive. The general rules on the sale of immovable property are found in Book 7, Part 7.1, of the Dutch Civil Code.[46] The acquisition of land by foreigners or legal persons is not excluded, and is not subject to approval by the competent authority.[47] Agricultural leases are also governed by the Civil Code (Book 7, 7.5) of the Netherlands, which already provides for certain restrictions. Thus, a leasehold contract may only be concluded for a limited period of time, which is 12 years for an agricultural building on a farm and 6 years for unbuilt agricultural land.[48] Furthermore, the conclusion of a leasehold contract is subject to the approval of the authority (agricultural leasing authority), specifying the conditions that should be met before the contract is approved.[49]

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[38] CEDR Country Report: United Kingdom 2019, pp. 11.

[39] In England and Northern Ireland, for amounts over £150,000, the so-called "Stamp Duty Land Tax" (SDLT) shall be paid. In Scotland land and buildings tax shall be paid over £145,000, and in Wales land tax over £180,000.

[40] CEDR Country Report: United Kingdom 2019, pp. 11.

[41] CEDR Country Report: United Kingdom 2019, p. 12.

[42] Agricultural Holdings Act 1986. https://www.legislation.gov.uk/ukpga/1986/5/contents [24.11.2021.] An agricultural holding is defined by the act as all land (whether or not agricultural land) covered by a leasehold.

[43] Agricultural Tenancies Act 1995. https://www.legislation.gov.uk/ukpga/1995/8/contents [24.11.2021.]

[44] Article 5 of Agricultural Tenancies Act 1995 provides only that a leasehold agreement of more than two years duration continues as a tenancy until one party informs the other party in writing of its intention to terminate the tenancy.

[45] Edmunds et al. 2020.

[46] Dutch Civil Code, Book 7 = Burgerlijk Wetboek Boek 7. https://wetten.overheid.nl/BWBR0005290/2021-07-01 [25.11.2021.]

[47] Holthuis, Burg 2020; In brief: agricultural land acquisition and use in Netherlands https://www.lexology.com/library/detail.aspx?g=27e50c09-2043-4b90-87bd-bd17fc666836 [27.11.2021.]

[48] Dutch Civil Code 7:325 (1)

[49] Dutch Civil Code 7:318–319

The tenant is entitled to the pre-emption right.[50] However, these restrictions are not considered real restrictions against foreigners and legal persons, as there is no restriction on the identity of the tenant.

The situation is different in Austria, where regulations and restrictions on land acquisition are specific. Natural and legal persons within and without the EU (foreigners) may acquire land. However, it should be noted that the general aim of restricting the acquisition of land by foreigners is reflected in the objectives of land policy, as any specific threat of acquisition by foreigners should be taken into account to prevent the alienation of rural settlements, excessive increases in land prices due to capital-rich foreign demand, and the depletion of land reserves.[51] Austria regulates land acquisition by foreigners at the regional (so-called Bundesland) level,[52] distinguishing between the possibility of legal persons of Member States and non-EU legal persons to acquire land. While legal persons resident in the EU are typically treated in the same way as Austrian citizens or are subject to specific provisions by regional regulation, land acquisition by non-EU resident legal persons is always subject to specific rules. In general, the acquisition of land, including that of legal persons, is subject to the approval of the real estate authority, similar to the administrative procedures for the acquisition of land by natural persons in Hungarian legislation. Each regional land transaction act specifies the conditions under which the approval may be granted (general conditions that the agricultural labor force shall be preserved, the continued agricultural or forestry use of the land shall be maintained, and the economically efficient agricultural and forestry land ownership shall be preserved) but also allows exceptions (e.g., acquisition by a close relative, a certain size of land) to the mandatory approval, similar to the Hungarian provisions. There are no other restrictions on land acquisition in Austria: there is only a specific case of preemption rights in the case of land acquisition by non-self-employed farmers in the Oberösterreich region and by a non-farmer in Steiermarkt, Tirol, and Vorarlberg. Although Austrian regulation does not violate EU provisions, in my opinion, it does not fully correspond to proper, transparent land acquisition within limits. While land acquisition is regulated at the regional level, agricultural leasehold is regulated by federal legislation according to the Land Tenancy Act.[53] This act does not specifically provide for leasehold to legal persons, but it limits the duration of the lease to a fixed period of 15 years in the case of agricultural holding where the main activity is gardening, fruit growing, or viticulture; 10 years in the case of agricultural holding engaged in other

[50] Dutch Civil Code 7:378–384
[51] Holzer 2012, 674–675.
[52] In Austria, there is no federal land transaction law; the regions (Bundesland) are responsible for the regulation, as stated by the Federal Constitutional Court (Österreichische Verfassungsgerichtshof) in its decision VfSlg 2658/1954. See Lienbacher 2018. With the exception of Vienna, all Bundesländer have issued their own land transaction acts.
The regulation of the movement of foreigners was transferred to the Bundesland in 1969; see Semper 2010, 608.
[53] Bundesgesetz vom 26. November 1969, mit dem Bestimmungen über landwirtschaftliche Pachtverträge getroffen werden (Landpachtgesetz) BGBl. Nr. 451/1969.

types of agricultural activity or land used mainly for gardening, fruit growing, or viticulture; and 5 years in all other cases.[54]

Legal persons may also acquire ownership of land in Italy, where, similar to the English model, legislation is considered to be more permissive. Specifically, there are legal person agricultural enterprises[55] according to the Civil Code of Italy, according to which the name of these enterprises shall include the term 'agricolo' (agricultural), and these enterprises may only carry out agricultural activities. The status of 'professional farmer' can even be granted for an agricultural enterprise if it has at least one professional farmer among its chief executive officers. To qualify for this status, at least 50% of the working time shall be devoted to agricultural activity and at least 50% of the income shall come from agriculture.[56] In principle, anyone may acquire land without restrictions and without the approval of the authority, with the exception of land of military importance.[57] In this case, the approval of the local authority is needed for acquisition by foreigners, with the exception of legal entities resident within the EU.[58] Agricultural enterprises are entitled to benefits, such as tax relief and exemption from general bankruptcy rules.[59] Preemption right prevails as a restriction and is granted to the person renting and farming the land for at least two years[60] and to a neighbor directly farming the land[61] (the holder of preemption right has 30 days to exercise this right). In addition, since 2004, agricultural holdings whose members are direct farmers have been entitled to the preemption right.[62] If the seller of the land fails to notify the person entitled to exercise the preemption right, he or she may apply to the court for the transfer of ownership to him or her within one year from the signing of the contract.[63;64] Regarding the Italian regulation, the provisions on preemption right clearly favor acquisition by domestic people, thus protecting agricultural land from foreign investors; however, land acquisition by legal persons is guaranteed, which may cause risk. Furthermore, under the Italian leasehold[65] regulation, no provisions restrict leasehold by legal persons or foreigners.

[54] § 5 of Land Tenancy Act
[55] The concept of agricultural entrepreneur is defined in Article 2135 of the Italian Civil Code: Codice Civile Regio Decreto 16 marzo 1942, n. 262, Art. 2135.
[56] Albisinni & Saija 2020.
[57] Decree-Law No 66 of 2010 on the Military Code Article 335: Decreto Legislativo 15 marzo 2010, n. 66 Codice dell'ordinamento militare.
[58] Albisinni & Saija 2020.
[59] Albisinni & Saija 2020.
[60] Preemption right (prelazione agraria) of the tenant is guaranteed by Article 8 of Law No 590 of 1965: Legge 590/65.
[61] Preemption right of the neighbor is guaranteed by Article 7 of Law No 817 of 1971: LEGGE 14 agosto 1971, n. 817.
[62] Preemption right of enterprises was established by Article 2 point 3 of Chapter 1 of Decree-Law No 99 of 2004: D.lgs. 29 marzo 2004, n. 99.
[63] Article 8 of the No 590 of 1965
[64] Albisinni & Saija 2020; Raffelli & Lucchetti 2021.
[65] Among the provisions on lease, the Italian Civil Code makes specific provision for the leaseholding of agricultural land (Articles 1628–1646) and for leasing to direct producers (Articles

4. Proposal for the possible Hungarian land acquisition regulation

According to the regulations of the four countries examined above, we see that some restrictions have been built into the provisions on land acquisition and use, but none of them can be considered a solution to address the anomalies related to land acquisition by legal persons. Therefore, although I agree with the Hungarian legislator's objective that gives and should give preference to specific values and interests – mentioned in the beginning –, I find it necessary to lift and limit the strict prohibition on land acquisition by legal persons and instead apply a proportionate restriction in line with the case law of the Court of Justice of the European Union (CJEU) – that it may not be replaced by measures that are less restrictive of the free movement of capital – by reforming the existing provisions.[66] As stated by the CJEU, such legitimate agricultural policy objectives should be formulated such that the protection mechanisms used to achieve them can be considered proportionate[67], as they do not exceed the necessary degree of restriction on the free movement of capital and are not discriminatory.[68] Therefore, this solution would not exclude land acquisition by legal entities established primarily for farming purposes, such as social enterprises operating as social farms, which use the land for agricultural purposes, do not acquire land in order to accumulate as much land as possible, and perform farm activities mainly for self-sustainment. I consider that legal entities – primarily social enterprises providing social farm services – with a transparent ownership structure should be eligible to acquire land ownership or the right of land use, which may use the land exclusively for agricultural and/or secondary activities,[69] and in which at least one farmer is a natural person. The acquisition and use of land by these legal entities shall also be approved by the authority with the involvement of the local land commission after a thorough examination. Preemption right should also be applied in the case of land acquisition and land use by legal persons. Any change in the ownership structure shall be notified immediately by the legal person to the authority. I also consider it appropriate to impose a separate tax on the acquisition and use of land by legal personnel. In the case of land acquisition by foreign legal persons, it is also necessary to require that they have at least one Hungarian member and express specific interest in acquiring Hungarian land ownership or land use. For both domestic and foreign legal persons' land acquisition and land use, a uniform land acquisition limit and land possession limit should be allowed up to a maximum of 300 ha, justifying the discriminatory nature of this restriction by the need to avoid the concentration of possession by legal persons.

1647–1654). Law No. 203/1982 on agricultural lease also contains concerning provisions: Legge 3 maggio 1982, n. 203 Norme sui contratti agrari.

[66] On the proposal for a regulation of cross-border acquisition by legal persons see Szilágyi 2015, 94–95; Csák & Szilágyi 2013, 220–222.

[67] The Commission summarises which instruments are considered proportionate and acceptable by the European Union in its Communication 2017/C 350/05 point 4.

[68] Commission Communication 2017/C 350/05 point 5.

[69] This is the view of Prugberger & Téglási 2018, 75.

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Succession and Transfer of Agricultural Land Holding: Evidence from Slovakia****

Abstract

The number of farmers in the European Union is gradually declining due to weak incentives, especially for the younger generation, to work in agriculture. State intervention is therefore essential for the preservation of farms in the form of legal regulation of succession as well as the creation of a supportive environment for successor entities to be able to continue agricultural production effectively. The aim of this paper is therefore to assess the sustainability potential of agricultural holdings on the basis of an analysis of the legislation on the succession and transfer of agricultural land holdings to physical and legal persons. In this article, we used traditional legal methods of examining legal regulations based on grammatical, logical, systematic, and teleological interpretations. The results show that in Slovakia there is currently no specific legal regulation by the state that would address the succession of agricultural land and agricultural enterprises in a targeted manner.
Key words: agricultural land holding, agriculture, land fragmentation, ownership, lease, succession, transfer

1. Introduction

Over the last years, the number of farmers, especially young farmers, have decreased in several European countries due to technological, social, and economic changes.[1] At the same time, there is the threat of an increasingly intensive process of concentration taking place in European farming. Between 2005 and 2015 the number of farms in the EU-27 decreased by approximately 3.8 million and the average size of the farms increased by about 36%.[2] Therefore, farm succession has become a key policy

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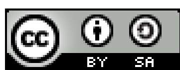
[1] Duesberga, Bogue & Renwick 2017, 526.; Leonard, Kinsella, O'Donoghue, Farrell & Mahon 2017, 148.
[2] Eurostat 2017.



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concern of the EU's Common Agricultural Policy and the European Commission's proposals for the future.[3] In this context, several political discourses are taking place that should result in implementation of instruments to support young farmers in setting up and ensuring the viability and future sustainability of their activities.

At present, economic and legal instruments for maintaining European agriculture are mainly used. The Common Agricultural Policy mainly uses an economic instrument in the form of stimulating support for the establishment of farms for young farmers through payments. In the program period 2014–2020, the young farmer payment is a compulsory scheme that Member States must implement[4] in accordance with Regulation (EU) 1307/2013 No. 1307/2013 of the European Parliament and of the Council of 17 December 2013 establishing rules for direct payments to farmers under support schemes within the framework of the common agricultural policy, and repealing Council Regulation (EC) No 637/2008 and Council Regulation (EC) No 73/2009. The discourse of "young farmers" is deeply related to the process of farm succession and its legal regulation. Results of research show that farms are passed from one generation to the next within the framework of the family because the agricultural sector is typified by a strong heredity. Thus, the most common means of entry to farming is succession in the family.[5] Succession on a farm is therefore the basis for a farm's existence and development.[6] State intervention is therefore essential for the preservation of farms in the form of legal regulation of succession as well as the creation of a supportive environment for successor entities to be able to continue agricultural production effectively. As follows from the recommendations of the Directorate General for International Policies, the key regulations are mainly supportive legal regulations, access to land, actions of new innovative initiatives, access to capital, capacity building, financial support, etc.[7] Based on the above-mentioned facts, the state must specifically regulate the legal succession of agricultural holdings when developing the concept of long-term sustainable agriculture.

The legal regulation of the succession of agricultural land holding of individual states of the European Union is determined by socio-political developments in relation to the support of small and medium-sized enterprises on agricultural land.

Slovakia as a post-socialist country declares in Article 44(5) of the Constitution of the Slovak Republic no. 460/1992 Coll. Constitution of the Slovak Republic as amended, that agricultural land is a non-renewable natural resource enjoying special protection from the state and society. Emphasizing the concept of public goods, the Constitution of the Slovak Republic in Art. 20(5) allows limitations on the transfer of ownership of property that is necessary to ensure the needs of society, food security of the state, development of the national economy, and the public interest to defined entities. However, there is still no effective regulation[8] for succession and transfers of agricultural land, and it therefore remains *de iure* tradable goods in the concept of private goods.

[3] Pitson, Bijttebier, Appel & Balmann 2020.
[4] European Commission 2016
[5] Zagata & Sutherland 2015, 41.
[6] Kerbler 2011, 290.
[7] Directorate General for International Policies 2017.
[8] Restriction of ownership.

The aim of this paper is therefore to assess the sustainability potential of agricultural holdings on the basis of an analysis of the legislation on the succession and transfer of agricultural land holdings to physical and legal persons. In the article, we use traditional legal methods of examining legal regulations based on grammatical, logical, systematic, and teleological interpretation. The research results are based on the legal opinions of domestic and foreign authors.

2. Structure of agricultural land holdings ownership

Slovakia can be characterized as a predominantly rural country, and agriculture remains important in terms of its productive and non-productive functions. Of the total land area of Slovakia, 4,903,405 hectares, 2,375,025 hectares (48.43%) constitute agricultural land and 2,027,852 hectares (41.36%) constitute forest land. The agricultural land is dominated by arable land of an area of 1,405,263 ha (59.17%) and permanent grassland of an area of 850,027 hectares (35.17%).[9]

Out of the overall area of agricultural land, 77.5% is owned by private entities (individuals and legal entities), 5.77% is owned by the state, and 16.77% is owned by unknown/unidentified owners administered by the Slovak Land Fund as a budgetary institution of the state.[10] One of the significant obstacles in land management in Slovakia is unresolved land fragmentation. Based on data from Ministry of Agriculture and Rural Development of the SR,[11] the following can be identified: (a) 8.4 million of ownership parcels; (b) 4.4 million of owners and 100.7 million of co-ownership relations; (c) 11.93 average numbers of owners in 1 parcel; (d) 22.73 parcels own 1 owner.

At the same time, individuals manage especially parcels up to 50 hectares, while legal entities dominate the ownership of areas of more than 50 or 100 hectares.[12] In the period 2010–2016, legal entities managed 80% of overall agricultural land.[13] Up to now, approximately up to 90% of the total agricultural land is leased land, which is one of the largest land tenure concentrations in the European Union.[14]

Therefore, Slovakia bis among the European countries with the highest proportion of land management by state and legal entities. Such a structure of land management often results in some unintended negative consequences,[15,16,17] one of which may be a lower demand for an effective solution of the problem of succession of agricultural land holdings. We believe that Slovakia is also for this reason one of the few countries in the European Union that does not have a specific concept of or legislation on succession of agricultural land holdings.

[9] Geodesy, Cartography and Cadastral Authority of the Slovak Republic 2021.
[10] Slovak Land Fund 2020.
[11] Ministry of Agriculture and Rural Development of the Slovak Republic 2020.
[12] Statistical Office of the Slovak Republic 2017.
[13] EUROSTAT 2018.
[14] Bandlerová & Lazíková 2018, 232.
[15] De Schutter 2011, 250.
[16] Burja, Tamas-Szora & Dobra 2020.
[17] Behnke 2018, 710.

3. Transfer of agricultural holdings *inter vivos*

The rules on the transfer of agricultural holdings while the entrepreneur or the existence of the legal person whose property the holding is part of is still alive are not regulated by *lex specialis*. The issue of transfer must be assessed under the provisions of several pieces of legislation depending on the legal form of the business. An agricultural holding can be owned by a natural or legal person.

The status of an entrepreneur as a natural person (self-employed farmer) is regulated by Act no. 105/1990 Coll. on private business activities of citizens as amended. In case of transfer of an agricultural holding, it is necessary to proceed in accordance with the provisions of the Contract of Sale of the holding pursuant to the provisions of Arts. 476–488 of Act no. 513/1991 Coll. Commercial Code as amended[18] or in accordance with the provisions of the Deed of Gift pursuant to Arts. 628–630 of Act no. 40/1964 Coll. Civil Code as amended. The subject of these contracts is the enterprise as a whole (e.g., agricultural land holdings), i.e., it concerns the transfer of ownership of things and the transfer of other rights and other assets used to operate the business, including agricultural land.

The status of an entrepreneur as a legal entity is regulated by the Commercial Code or a special regulation. An agricultural holding can take any form of legal entity (trading company,[19] cooperative, state enterprise, or another legal entity).[20] Based on statistical data from the Ministry of Agriculture and Rural Development of the Slovak Republic for the period 2016–2020, the most numerous business entities in agriculture are limited liability companies and cooperatives.[21]

(a) Transfer of ownership interest in a limited liability company (Art. 115 Commercial Code): A partner may, in accordance with the Articles of Association, transfer his shareholding either to another partner or to another person. Unless the Articles of Association provide otherwise, the partner may, with the consent of the General Assembly of the company, transfer his shareholding to another partner. He may transfer his share to another person outside the company if the Articles of Association so allow. One of the conditions of the transfer to another person, even if the Articles of Association allow it, may be the consent of the General Assembly. The result of the transfer of the business share may be the sale of the majority share of the business company and thus the fulfillment of the reason for the termination of the lease agreements for the lease of agricultural land by the lessors, landowners.

(b) Transfer of membership rights in cooperative (Art. 229 Commercial Code): According to the current legislation, cooperatives have the character of mutual cooperatives. Their registered capital is the sum of all member deposits. The ratio of the

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[18] Act no. 513/1991 Coll. Commercial Code as amended is *lex specialis* in relation to the Act no. 40/1964 Coll. Civil Code as amended.

[19] In accordance with the Green reports of the Ministry of Regional Development of the Slovak Republic for the period 2016–2020, the most numerous business entities whose subject of business is focused on agriculture are limited liability companies and cooperatives.

[20] In legal entities with an obligation to contribute, agricultural land may be the shareholder's contribution to the company.

[21] Ministry of Agriculture and Rural Development of the SR 2016–2020.

membership fee to the registered capital of the cooperative determines the amount of the membership share, unless the Articles of Association of a particular cooperative provide otherwise. The Commercial Code, which regulates the legal status of the cooperative, allows the transfer of membership in the cooperative and thus the membership share to another member or to a third party. The transfer of membership may involve a change in the cooperative's property share. If the majority of the shares in the cooperative are sold, the cooperative, as the lessee of agricultural land, must publish this fact on the official notice board of the municipality in whose cadastral territory the land is located and the lessors may terminate the lease for this reason.

As almost 90% of all land in Slovakia is agricultural land, it is necessary to reflect on the consequence of the transfer of ownership rights to tenancy relations. Pursuant to Art. 12 Sect. 6 of Act No 504/2003 Coll. on the lease of agricultural land, agricultural enterprise, and forest land and on the amendment of certain laws as amended, in case of the contractual transfer of the company, the lessee is obliged to fulfil the notification obligation towards the owners of the land, which the lessee has used so far. Tenants may decide to terminate the lease for this reason. If the lease is not terminated due to the sale of the lessee's business, the successor, i.e., the buyer, enters into these relations. He is obliged to respect the established requirements of the agreed lease agreements.

4. Succession of agricultural land and/or holding

The succession of agricultural land is not regulated in the legal order of the Slovak Republic by a special legal regulation. Inheritance is governed by the provisions of Arts. 460–487 of the Civil Code, which regulates two forms of inheritance, namely by law and by will. Legal inheritance predominates in Slovakia. The Civil Code regulates four groups of legal heirs in case of legal inheritance.

As for succession of agricultural land, the provisions of Art. 23 of Act No 180/1995 Coll. on certain arrangements for the holding of land as amended prohibit an inheritance decision resulting in division of existing land to land that is smaller than 2000m^2 in the case of agricultural land, and less than 5000m^2 in the case of forest land. This prohibition also applies to the transfer of ownership of land on the basis of a legal act of the owner, such as purchase, donation, exchange contract, or joint venture settlement agreement, as well as to the transfer of ownership based on a court decision on settlement of co-ownership, as follows.

Another restriction in connection with the transfer of ownership of agricultural land follows from Art. 2 Sect. 3 of Act No 97/2013 Coll. On land-based communities as amended, according to which "the transfer of the share in the joint property must not result in co-ownership share on the joint property which corresponds to an area of less than 2,000 m^2; the merging of shares must not result in a share corresponding to an area of less than 2,000 m^2."

In the legal order of the Slovak Republic, the regulation of inheritance is stipulated in the seventh part of the Civil Code, in Arts. 460–487. It is a general arrangement enshrined for the inheritance of any property, including the succession of agricultural land and agricultural holding. One of the basic principles of the regulation of inheritance is the universal succession of the guarantor's rights and obligations *ex lege* by the death of the guarantor (Art. 460 Civil Code).

Agricultural land and agricultural holding are part of the guarantor's property and are settled as inheritance from the guarantor within general provisions. According to the provisions of Act. 461 Sect. 1 of the Civil Code, inheritance takes place by law, will, or both. Inheritance by will is applied as an exclusive form of transfer of the guarantor's property and liabilities to the heirs, or it is applied simultaneously with inheritance by law. The relationship between these titles is subsidiary. Pursuant to Art. 461 Sect. 2 of the Civil Code, *"If the heir of the will does not acquire the inheritance, the heirs by law take his place. If only part of the inheritance is acquired from the will, the inheritance is acquired by the heirs by law."*

In Slovakia, the writing of wills, and thus inheritance by will, does not have a long tradition; in about 90% of inheritance proceedings, heirs are determined on the basis of inheritance groups.

4.1. Subjects of the succession

Heirs can be natural and legal persons, while they must be eligible for rights and obligations in accordance with Art. 7 of the Civil Code, and at the same time, they must be eligible for inheritance, i.e., they may not be disinherited or ineligible. Who can become an heir depends on the legal title of inheritance. If the legal title is by law, only natural persons divided into four inheritance groups can become heirs, subsuming the heirs in a direct side-line. Inheritance that will not be acquired by any legal heir will belong to the state. If the inheritance is settled by legal title of the will, a natural or legal person can become the heir. The will must comply with the strict formalities required by the law on the validity of wills.

The maximum limit of ownership of agricultural land under the current legislation is not set. In inheritance proceedings, however, it is necessary to comply with the ban on the fragmentation of agricultural and forest land outside the built-up area of the municipality in accordance with Art. 23 of Act no. 180/1995 Coll. In the event that the inherited agricultural land has areas below the legal limit, the heirs must come to a mutual agreement. If an agreement cannot be reached, the decision will be made by the court.

The property acquired by succession or by transfer is registered in the Land Registry,[22] where the ban on agricultural land fragmentation must be taken into account.

4.2. Processing of the succession of agricultural land

Negotiation of inheritance, confirmation of its acquisition in a legally binding manner that does not raise any doubts, and ensuring the continuity of the transfer of inheritance to a legal successor are provided by Arts. 158–161 of Act no. 161/2015 Coll. Civil non-dispute order as amended. This is in the competence of the district court in the district in which the legator had a permanent residence address at the time of death or where the property is located in case that the jurisdiction cannot be determined by permanent residence; or the place of death of the legator or if jurisdiction cannot be determined under the previous conditions. In succession proceedings, the competent court of first instance instructs the notary to act and decide on the succession; in view of

[22] Land Registry is regulated by Act no. 162/1995 Coll. on Land Registry and on registration of property and other property rights (Land Registry Act) as amended.

the above-mentioned regulation, the notary's decisions represent the decisions of the court of first instance. The activity of notaries as judicial commissioners in inheritance proceedings is considered a direct exercise of part of the judiciary, as follows from the resolution of the Constitutional Court of the Slovak Republic.[23] The judicial commissioner participates in the inheritance proceedings entrusted with decision-making powers or participates as a judicial body in the first instance in inheritance proceedings in fulfilling the positive obligation of the state to protect human rights and freedoms in connection with the implementation of the fundamental right to judicial and other legal protection pursuant to Art. 46 Sect. 1 of the Constitution of the Slovak Republic and the right to a fair trial according to Art. 6 Sect. 1 of the Convention for the Protection of Human Rights and Fundamental Freedoms.

The current legal regulation of inheritance proceedings is based on the principle of state interference in the transfer of property rights and obligations from the guarantor to legal successors. It includes the power as well as the obligation to initiate inheritance proceedings *ex officio*, even without a petition, as soon as the relevant district court learns that someone has died or been pronounced dead.

As for agricultural land, i.e., agricultural holdings, there are no special conditions for the implementation of the succession procedure. In the event that the decision on inheritance concerns agricultural land, the Land Registry Office shall keep a record of the creation, change, or termination of rights to agricultural land, as to all real estate.

The heir is liable for the debts of the legator only to the extent of the inheritance. In the event that there are valid decisions of state authorities to impose sanctions, they must be implemented. If the heir decides to do business in agricultural production, he must comply with the legal obligations arising from Act no. 220/2004 Coll. 220/2004 Coll. on the protection and use of agricultural land and amending Act no. 245/2003 Coll. on Integrated Pollution Prevention and Control and on the amendment of certain laws as amended.

4.3 Processing of the transfer of agricultural land

The procedure for acquiring ownership by natural and legal persons by transfer is regulated by the Civil Code, which regulates the purchase, donation, exchange contract, and transfer of ownership for the purposes of exercising the lien, or exercising the security transfer of the right. The provisions of the *lex specialis* Act no. 140/2014 Coll. on acquisition of ownership of agricultural land as amended, also apply to the transfer of agricultural land. The purpose of the law is to ensure that agricultural land is acquired by entities that carry out agricultural production as a business. This legislation introduced several restrictions on the acquisition of agricultural land.[24] Pursuant to the law, the acquisition of ownership of agricultural land is by sale or gratuitous transfer according to

[23] Resolution of the Constitutional Court of the Slovak Republic PLÚS 12/2019 of 6 February 2019

[24] The Constitutional Court, on the basis of the case No. PL. Constitutional Court 20/2014 of 14th November 2018, ruled that the provisions of Art. 4, Art. 5, and Art. 6 of Act no. 140/2014 Coll. do not comply with Art. 1 Sect. 1, Art. 13 Sect. 4 and Art. 20 Sect. 1 of the Constitution of the Slovak Republic.

the provisions of the Civil Code, while the legal regulation does not apply to gratuitous transfer to the ownership of entitled persons according to special laws[25] and transfer according to special regulations.[26] The law does not affect the acquisition of ownership of agricultural land in the implementation of land modifications[27] or in the transfer of ownership in the public interest for the purposes for which the agricultural land may be expropriated.[28]

4.4. Goals of land possession policy

Although so far the state has not placed much emphasis on the legal regulation of succession on agricultural land, new goals of land possession policies were introduced in the Program Statement of the Government of the Slovak Republic for the period 2020–2024 as follows: (a) Revision of the current legal regulation of land ownership and use relations in accordance with the Constitution of the Slovak Republic in order to balance the position of land owners in relation to its users. It will present a constitutional solution to ownership relations to land, thus preventing the sale of land for speculative purposes. The aim is to ensure that a decisive influence on the strategy and the direction of land management remains in the hands of Slovak entities. (b) Completion of restitution proceedings, settlement of land in horticultural settlements, termination of proceedings on the compilation of registers of renewed land record keeping, and correction of obvious wrongs caused in these proceedings. (c) Introduction of a transparent land lease system managed by the Slovak Land Fund to active farmers, who should have the potential for making the highest contribution to the growth of Slovakia's food self-sufficiency. (d) Creating legislative conditions for speeding up and streamlining land allocation procedures for small, young, family, and novice farmers in order to facilitate their access to land. (e) Seeking a solution for land modifications. (f) Creation of a specialized land administration under the responsibility of the department.

On the negative side, no specific legal framework is yet known to achieve these proposed goals.

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[25] For example, Act no. 229/1991 Coll. on the regulation of ownership relations to land and other agricultural property, as amended, Act no. 503/2003 Coll. on the return of ownership of land and on the amendment of the Act of the National Council of the Slovak Republic no. 180/1995 Coll. on certain measures for the organization of land ownership, as amended.

[26] Art. 61a, 61c and 63 of Act no. 543/2002 Coll. as amended. Art. 3 and 4 of the Regulation of the Government of the Slovak Republic no. 238/2010 Coll., laying down details on the conditions of lease, sale, exchange, and acquisition of real estate by the Slovak Land Fund, as amended.

[27] § 1 par. 2 of the Act of the Slovak National Council no. 330/1991 Coll. on land readjustments, land ownership arrangements, land offices, land fund and land associations, as amended.

[28] For example Art. 108 of Act no. 50/1976 Coll. as amended, Act of the National Council of the Slovak Republic no. 129/1996 Coll. on certain measures to speed up preparations for the construction of motorways and roads for motor vehicles, as amended.

Conclusion

In all countries of the European Union, including Slovakia, the share of farmers – natural persons – is declining, which may lead to an irreversible change in the structure of agricultural holdings. This threat is therefore a matter of political discourse among EU politicians who have introduced measures to stimulate the young generation to undertake farming under the Common Agricultural Policy.

The development of land ownership in Slovakia is significantly influenced by socio-political developments. Large farms still have a dominant position in the management of agricultural land among farms (80%). This may be the reason there is no specific legislation in relation to the succession and transfer of both agricultural land and agricultural holdings. The issue of transfer must be assessed under the provisions of several pieces of legislation, depending on the legal form of the business. An agricultural holding can be owned by a natural or legal person.

In general, however, it can be stated that agricultural land as well as agricultural holdings are inherited like all other things, which can have a negative impact on land fragmentation and the lack of interest of heirs in the further management of agricultural land. In this regard, there is only one legal regulation that prevents the fragmentation of land, Act no. 180/1995 Coll. on certain measures for the organization of land ownership, as amended. On the other hand, it does not prevent the creation of co-ownership shares in agricultural land, the shares of which are inherited.

A specific feature of business activities on agricultural land in Slovakia is that farmers do business mainly on leased land, which deepens the owners' lack of interest in ownership of agricultural land. From the analysis of legal regulations concerning the inheritance of agricultural land, it is necessary to state a weak intervention of the state in dealing with succession. The Government of the Slovak Republic is scheduled to address this issue in the future, but its basic concept has not yet been introduced.

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Filemona PRETE*

The Italian Legal Framework of Agricultural Land Succession and Acquisition by Legal Persons**

Abstract

The work outlines the Italian legal framework of agricultural land succession and of land acquisition by legal persons. The issue of the inter-generational turnover in agriculture is a fundamental issue of the political agenda of the European Union and is particularly relevant in Italy, where farms are predominantly family-owned. For this reason, intra-family succession is the preferred mechanism to transfer farm management to future generations, and it is carried out mainly through the so-called Family Pact (art. 768-bis of the Civil code) before the death of the farmer.
Considering this type of transfer between generations, it is necessary to distinguish three different scenarios (that in which the agricultural holding is currently managed as a sole proprietorship farm business by one of the parents; that in which management of the agricultural holding has already been transferred to the children, but land and buildings remain the property of the parents; and that in which the holding is currently managed as an agricultural company in which the parents retain a majority interest).
The single compendium, a specific legal institution aimed at preventing fragmentation of rural land, is also analyzed, as well as the consequences of the death of its owner. Succession in agricultural land and/or holdings and in agricultural contracts is also considered.
With regard to succession of agricultural land and/or holdings, in case of death of the owner of agricultural land conducted or cultivated directly by him or by his family members, art. 49 of Law no. 203/1982 provides for the coercive establishment of an agricultural lease relationship, as the heir who is also a professional agricultural entrepreneur or a direct farmer becomes tenant by law (ex lege) of the land owned by the hereditary community for a period of 15 years, which corresponds to the minimum duration of leases of agricultural land established/set by art. 1 of Law no. 203/1982. At the end of said period, art. 4 of Law no. 97/1994 states that the heirs who are considered leaseholders of the portions of rural land included in the other co-heirs' quotas, pursuant to art. 49 of Law no. 203/1982, have the right to purchase, on expiration of the coercive lease of land established by law, ownership of said portions (at the average agricultural value of the land) together with stocks, appurtenances, and annexed sheds.
The last part of the work explores the rules of acquisition of land/holding by domestic and foreign legal persons. There are no limitations in Italian law on the acquisition of agricultural companies and/or agricultural holdings by foreign persons, both individuals and companies. Foreign investments or ownerships of farm property are neither supervised nor forbidden. As a result, a foreign investment is not subject to any specific government approval or consent from a public authority before the acquisition of any shares in a domestic agricultural company. However, the acquisition of a farm property may be subject to general rules related to ownership acquisition, and planning and environmental rules applicable to any other property.
Keywords: agricultural land,succession, acquisition, farmer, legal persons

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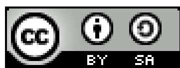

1. Introduction

The survival and competitiveness of the agricultural sector is increasingly threatened by the aging of farmers and farms, one of the greatest challenges currently faced by rural areas.

The inter-generational turnover in agriculture is a fundamental issue of the political agenda of the European Union (EU). From this perspective, it has launched a number of initiatives directed towards favoring the entry of a new generation of young entrepreneurs in the agricultural sector.[1]

According to the EU Commission, in 2016, for every farm manager under 40 there were three farm managers over the age of 65 in the EU.[2] The situation in Italy is even worse: The results of the 7th Agricultural Census will be published in June 2022, but previous documents show that only 5 per cent of people under 35 choose to invest in agriculture, while farmers older than 65 make up more than 37 per cent of the farming population.[3] The shortage of young entrepreneurs may create serious problems for the productivity and survival of the agricultural sector. It is a widespread opinion, in fact, that a larger proportion of young entrepreneurs in the sector would contribute to improving the productivity of agricultural enterprises (by increasing human capital and encouraging the adoption of innovation and long-term investment) as well as enhance the future competitiveness of EU agriculture in general. This is why the European Union has been introducing new initiatives to promote the establishment of young farmers since the 2007–2013 Rural Development Program and has done so in the latest 2023–2027 Common Agricultural Policy as well.

Agriculture in Italy and Europe involves farms that are predominantly family-owned.[4] For this reason, intra-family succession is the preferred mechanism to transfer farm management to future generations.[5] Also, transmitting farms within the family promotes the accumulation of farm-specific knowledge related to the weather, the quality of soil, and the type of crops and breeding that best fits the specifics of the farmland.

2. Inter vivos transfer of agricultural holdings between generations

When a farmer who owns land retires, the farm can be transferred within the family: Anticipating the generation change could be beneficial in terms of managing the relationships between future heirs, as well as profitable through all the benefits reserved to young farmers and advantageous due to possible tax savings.

[1] Carillo et al. 2013, 39; Cavicchioli et al. 2019.
[2] European Commission 2021.
[3] Istat 2010.
[4] Graeub et al. 2016, 1–15.
[5] Chiswell 2018, 105.

A tool introduced in the Italian legal system for this purpose is the so called Family Pact, which art. 768-*bis* of the Civil code defines as "*the contract by which the entrepreneur transfers, in whole or in part, the company, and the holder of company shares transfers, in whole or in part, his shares, to one or more descendants.*"[6]

The Family Pact constitutes an exception to the prohibition regarding succession agreements, contained in art. 458 Civil Code, that is all agreements other than wills by which a) a person disposes of his estate before his demise or b) future heirs waive or dispose of rights which may be due in relation to a succession which has not yet taken place. If entered into, agreements that meet these characteristics would be considered null and void.

While planning this type of transfer between generations, it is crucial to identify the best tools to (a) obviate complaints from other future heirs, (b) ensure certainty of the holding transfer, (c) afford advantageous use of tax breaks and exemptions (thus carrying out the operation at the lowest possible cost).

To this extent, it is necessary to distinguish three different scenarios.

(a) The agricultural holding is currently managed as a sole proprietorship farm business by one of the parents.

In this case, the transfer can be carried out through a Family Pact, which allows transfer of the holding to one (or more than one) of the descendants free of charge, with the consent of all future legitimate heirs (so called 'legittimari,' i.e., normally the spouse and other children), so that any possible future complaint on their part is prevented.

It is basically a sort of donation which, unlike donations, cannot be contested, as all future heirs will have given their prior consent to it.

The Family Pact could provide for the beneficiary of the transfer to liquidate the other legitimate heirs' (brothers or sisters) share of inheritance, in cash or in kind (even as a deferred payment), or for the latter to renounce their share (as it often happens with the transferor's spouse) subsequent to receiving (or having received) a donation from the transferor.

The Family Pact can benefit from an exemption from indirect taxes on the holding transfer and can therefore be carried out at a very low cost, even for large farm businesses, on condition that the beneficiary carries on the farming activity for at least five years after the transfer.

Should the transfer be made in favor of more than one descendant, the holding will have to be conferred into an agricultural company, so that the business can be operated in an associated form. If the parents wish to retain a stake in the future agricultural company, the operation can be carried out by conferring the holding into a company and simultaneously transferring part of the capital shares to the descendants through a Family Pact.

Should the generation change happen in favor of an only child, with both parents' consent, the Family Pact could be unnecessary, and the transfer can be made through a simple donation (which will also benefit from tax exemption).

[6] Introduced by Law 14th February 2006, no. 55.

In case of multiple children where the holding transfers in favor of only one of them, should the other descendants not be available to sign the Family Pact, the donation could be contested within a future succession (if necessary conditions apply). Donations (even indirect ones) in favor of the other children that were made in the past or which might be made in the future (in testamentary form) should be verified, as doing so would prevent a possible challenge to the holding transfer. Alternatively, other forms of holding transfer could be taken into consideration, for example, a life income support contract providing for the transfer of the farm business against the obligation to assist personally and take care of all the parents' needs (housing, food, healthcare).

(b) Management of the agricultural holding has already been transferred to the children, but land and buildings remain the property of the parents.

The situation is slightly more complex when management of the holding has already been transferred to the child (or children), but the premises (agricultural land and instrumental buildings) remain the property of the parents.

In this case, it is not possible to transfer only the land and buildings through a Family Pact (which must involve businesses or shares, and not only buildings), nor is it possible to benefit from the tax exemption for donations (as this also only applies to the transfer of a business or shares).

Still, the current discipline for donations to lineal descendants can be applied in this case (with an allowance of one million euros on the donation tax for each descendant, and a 4 per cent rate on the excess).

Selling the agricultural land to descendants could be considered an alternative (subject to establishment of a company), which would only be subject to a 1 per cent tax on the sale price, thanks to a tax break relating to the purchase of agricultural land by farmers. However, it must be noted that in such cases, should the total amount of the taxes due be lower than those applicable in case of donation, the so called 'presumption of donation' will be applied to the transfer of buildings between parents and children.

It should also be noted that, in case of sale, the possible presence of neighbors with (agrarian) pre-emption rights should be verified.

In case of multiple children, if the agricultural lands are destined to only one of them, possible donations (even indirect ones) in favor of the other children made in the past or which might be made in the future (in testamentary form) should be verified so as to prevent a possible challenge to the land donations. As an alternative, it might be convenient to opt for the tool of sale or consider other contractual forms, such as a life income support contract.

(c) The holding is currently managed as an agricultural company in which the parents retain a majority interest.

When the farm business is managed in company form, presumably with the involvement of one or more children, but the parents still retain a majority interest, the generation change can be carried out through a Family Pact, as seen in the case of a sole proprietorship farm business. The Family Pact can as a matter of fact also concern interest shares in a company.

From the tax exemption viewpoint, however, some differences exist between partnerships (in which it is sufficient that the beneficiary continues carrying out the activity for at least five years after the transfer) and companies, i.e., agricultural limited liability companies (in which the tax break is subject to the transfer of a controlling

interest, that is to say more than half of the voting right). In such case, the operation should be studied more carefully, especially if the generational change should happen in favor of multiple children, in which case a sole transfer of a unique joint capital share could be made with the appointment of a common representative.

In this case as well, should the Family Pact not be a viable option, there is always the chance to opt for a regular donation of capital shares, to which the same rules on indirect tax exemption are applicable, and should this not be the case, recourse might be had to the current favorable discipline for the donation of capital shares to lineal descendants.

3. Succession of agricultural land and/or holding

Under Italian Inheritance Laws of Succession, an individual may dispose of his estate either by making a will or, alternatively, the estate shall pass to the heirs under the provisions of statutory rules that provide for the deceased's relatives in varying proportions depending on how close their relationship to the deceased was.

However, even in the presence of a will, Italian inheritance laws offer some degree of protection to family members, limiting the right of the testator (the person who makes a will and whose estate is to be inherited) to dispose of his own assets.

Where a person dies without a valid will, Italian succession law has very detailed provisions clearly outlining who will inherit and how much (so called 'successione legittima'). The inheritance devolves following the principles of the Italian Civil Code. The legitimate heirs of the deceased (the spouse, the children, and other relatives) are identified by the law starting from the closer ones until the 6th degree of connection. Should the deceased have no heirs, the estate devolves to the Italian State.

The principles of testamentary and legal succession cross with the principle of 'forced heirship': The Italian Civil Code reserves statutory shares of the estate to very close relatives (spouse, ascendants, and descendants, defined as 'forced heirs'). In implementing the will, Italian law will also ensure that the immediate members of the deceased's family receive their minimum statutory share of the Estate ('quota di legittima'), as the wish of the testator to assign his assets to strangers under Italian law is accepted but is restricted. When drafting an Italian will the testator is free to dispose of a part of his assets, defined as the 'disposable quota.'

If a will infringes the minimum statutory shares that the legitimate heirs are entitled to, they have a right to apply to the Italian courts for a legal action called 'azione di riduzione' (action of abatement). In that case, whatever the provisions in the will, the Italian courts will then re-distribute the assets of the estate in accordance with the minimum statutory shares of the estate set out by law.

When it comes to agricultural land and/or holdings included in the estate, the system makes an exception to some of the rigid rules of general Succession (such as the principle of equality between co-heirs and the prohibition of succession agreements). The peculiarities of the Italian regulation for succession of agricultural land and/or holding are inspired by the necessity to preserve the continuity and unity of the farm business.[7]

[7] Carrozza 1978, 758; Galloni 1980, 195.

As a matter of fact, the so called agrarian succession (or anomalous succession) does not have the aim of guaranteeing continuity in the estate proprietorship, but rather of guaranteeing the continuity and integrity of the farm business and therefore of the productive process.[8] To this extent, the application of some fundamental criteria of the general succession rules of civil law is prevented, but only in particular cases in which, among the potential heirs, there are farmers who also have the status of 'coltivatore diretto' (direct farmer) or 'imprenditore agricolo professionale (I.A.P.)' (professional agricultural entrepreneur). These qualifications indicate, in the first case, a farmer who dedicates himself directly, habitually, and predominantly to the manual cultivation of the lands, and/or to the rearing of animals (at least one-third of the labor directly involved in the agriculture business must be done by these individuals and their own family members); in the second case, "*a person who, possessing professional knowledge and skills within the meaning of Article 5 of Regulation (EC) No 1257/1999, dedicates at least fifty per cent of his total working time, either directly or as a partner in a company, to the agricultural activities referred to in Article 2135 of the Civil Code and who derives at least fifty per cent of his total income from such activities*" (art. 1, Leg. Decree 29th March 2004, no. 99).

As in matters of tax benefits and credit facilities, also in case of succession of agricultural land and holding, the Italian legislator considers farmers who are also qualified as either direct farmer or professional agricultural entrepreneur as deserving of a special treatment on the premise that they are particularly dedicated to farming.

The provision of reference is contained in Law 3rd May 1982, no. 203, setting out specific rules applicable to the lease of agricultural properties. This Law regulates several aspects, including the duration of leases, their termination, and the condition under which such properties may be transferred to another owner, and the right of first refusal of the tenant if the landlord intends to lease the property to third parties.

Art. 49 (entitled 'Rights of heirs') states that: "*In case of death of the owner of agricultural land conducted or cultivated directly by him or by his family members, those among the heirs who, at the time of the opening of the succession, result in having exercised and continue exercising farming activities on those lands as professional agricultural entrepreneur or as direct farmer have the right to continue conducting or cultivating said lands also with regard to the portions included in the other co-heirs' quotas and are considered tenants thereof. The lease relationship thus established between co-heirs is governed by the provisions of this law, starting from the date of the opening of the succession.*"

In other words, said article provides for the coercive establishment of an agricultural lease relationship, as the heir who is also a professional agricultural entrepreneur or a direct farmer becomes tenant by law (*ex lege*) of the land owned by the hereditary community for a period of 15 years, which corresponds to the minimum duration of leases of agricultural land established/set by art. 1 of Law no. 203/1982.

Therefore, it appears clear that through such a provision, the 1982 legislator has intended to guarantee, even after the farmer's death and for a period of at least 15 years, the integrity and continuity of the farming business by having the interest in the continuity of management and conservation of the economic entity prevail on the single heirs' interest in receiving an equal treatment between them.[9]

[8] Casadei 2001, 592–621; Valenza 2009, 1083.
[9] Germanò 1982, 1313.

In order for the (coercive) leasehold relationship to be established by law, it is necessary that the assignee possess the subjective requirements indicated in art. 49, i.e. the quality of heir, as well as the fact that he has carried out and continues to carry out, at the time of the opening of the succession, farming activities on the deceased land, as professional agricultural entrepreneur or direct farmer.

With regard to this last requirement, the *Corte di Cassazione* (the Italian Supreme Court) has specified that art. 49 of Law no. 203/1982 can only be applicable to family heirs who, before the death of the deceased, were carrying out their farming activity on the basis of a *de facto* relationship or of a relationship terminated because of death (such as in the case of a company), thus excluding the family heirs exercising farming activities on the basis of a regular lease contract, as in such cases the heir would continue to have the use of the rural land pursuant to paragraph 3 of said art. 49, according to which lease contracts for rural land do not terminate on death of the ground-landlord.[10]

The other co-heirs have no way of opposing or objecting to said coercive lease, as they are only entitled, as landlords, to receive a sum of money as compensation (so called 'fair rent').

Once the position of the beneficiary heir compared with that of the other co-heirs has been clarified, it is useful to understand what happens to the coercive lease of rural land established by law at the end of the minimum duration of 15 years.

The answer is contained in another crucial provision dealing with succession of agricultural land and holding, art. 4 of Law 31st January 1994, no. 97 (aptly named 'Conservation of the integrity of the farm business'). This provision was initially only applicable to mountain territories, but its validity was extended to every other rural land in 2001 (via Leg. Decree 18th May 2001, no. 228). It states that the heirs who are considered leaseholders of the portions of rural land included in the other co-heirs' quotas, pursuant to art. 49 of Law no. 203/1982, have the right to purchase, on expiration of the coercive lease of land established by law, ownership of said portions (at the average agricultural value of the land) together with stocks, appurtenances, and annexed sheds.[11]

However, for the valid exercise of the pre-emption right, it is necessary for the tenant to meet the requirements mentioned in art. 4 of Law no. 97/1994: (a) He has to commit to conduct or cultivate directly the land for at least six consecutive years; (b) the land he intends to purchase (together with other land he might already own) must not exceed three times his working capacity or that of his family; and (c) he must not have purchased, in the previous three years, other rural lands with a taxable value higher than the threshold set by the law.

Finally, within the six months following the expiry of the coercive lease relationship, the tenant is required to notify to the other co-heirs (by registered mail with return receipt) his intention to purchase as well as to pay the agreed price within three months of notification.

The reasons behind these provisions, the latter implying a previous coercive lease relationship established pursuant to art. 49 of Law. no. 203/1982, can be traced back, on one hand, to the goal of allowing the continuation of the farming business activity (which would otherwise be hindered or prevented by the general rules on succession) and, on

[10] Jannarelli 1985, 1207.
[11] Pisciotta 2015, 135; Ferrucci 1996, 573.

the other, to the opportunity to re-unite in the same subject the status of owner of the productive assets with that of entrepreneur.[12]

4. The single compendium

In Italy, there is specific legal institution aimed at preventing fragmentation of rural land, the so called single compendium, in relation to which it might be interesting to consider what happens in case of death of the owner.

When introducing it into the legal system, the Italian legislator was probably inspired by an ancient institution belonging to the region Trentino Alto Adige called 'maso chiuso' ('maso' signifies rural dwelling consisting of agricultural lands, pastures, a cattle shed, and a barn; 'chiuso' means closed), characterized by the fact that the complex of goods of which the 'maso' consists cannot be divided either by *inter vivos* acts, such as a sale, or by *mortis causa* acts, such as in succession.[13]

Initially introduced for mountain territories only by Law no. 97/1994, and extended to all rural lands in 2004 (by Leg. Decree no. 99/2004), the single compendium is today defined in art. 5-bis of Leg. Decree no. 228/2001 as "*the extension of land necessary to achieve the minimum level of profitability determined by regional rural development plans for the provision of support to investments provided for by Regulations (EC) nos. 1257 and 1260/1999, and further modifications*."

It can be established by the farmer on a voluntary basis with regard to land already owned or at the time of purchase, it implies the commitment to cultivate or conduct it as professional agricultural entrepreneur or direct farmer for a period of at least ten years, and the law encourages its establishment with tax concessions.

Agricultural lands can be constituted in a single compendium as well if not adjacent to each other so long as they are functional to the exercise of the farm business.

According to this provision, the land and related appurtenances, including buildings, that make up the single compendium are considered indivisible units for ten years from the time of constitution and cannot be divided up for these years due to transfers *inter vivos* or *mortis causa* (which would therefore be null).

This means that, should the owner die during the ten years (period of indivisibility), the compendium will be assigned to the heir who requests its attribution, with the excess charged. In favor of the heirs, for the unsatisfied part, a currency credit secured by a mortgage will be recorded at a fixed tax on the land fallen in succession, to be paid within two years of opening of the succession with an interest rate one point lower than the legal one.[14]

Should the owner die after the ten years have passed, the co-heir who appears to have exercised and will keep exercising the farming activities as professional agricultural entrepreneur or direct farmer will have a right to the establishment of the coercive lease relationship (pursuant to art. 49 of Law no. 203/1982) and, once this latter expires after

[12] Russo 1994, 605; Casarotto 1994, 586.
[13] Mori & Hintner 2013, 6.
[14] Ferrucci 2011, 465.

its legal duration of 15 years, he will also have the right to purchase the portions included in the other co-heirs quotas (pursuant to art. 4 of Law no. 97/1994).[15]

5. The Family Pact and the succession.

The family pact as described above is entered into and produces effects before the succession; therefore, through its stipulation the establishment of a coercive lease relationship pursuant to art. 49 of Law no. 203/1982 can be avoided and, consequently, so can the exercise of the pre-emption right in the purchase of the land in question. This is because the family pact allows the farmer to transfer the business (totally or partially) to his descendants before his death.

A slight problem arises from the fact that, formally, the provisions contained in Law no. 203/1982 are mandatory (cannot be derogated) and make any conflicting agreement null and void. This means that if no descendant has the qualifications required by art. 49 of Law no. 203/1982 (for the establishment of the coercive lease relationship), the Family Pact is valid and effective (as the Civil Code article contemplating it, i.e. art. 768-bis, expressly derogates the general rules of succession).

However, should any of the descendants possess the requirements of art. 49 of Law no. 203/1982, the family pact would in that case violate the mandatory rules of said law.

This issue is still being debated by doctrine and much will depend on the number of possible related challenges in court.[16]

6. Succession and agricultural contracts.

Should a farmer exercising his activity on land of which he is not the owner die, pars. 3 and 4 of art. 49 of Law no. 203/1982 state, on the one hand, that agricultural contracts are not dissolved due to the death of the grantor (so that the tenant's business stability is guaranteed) and, on the other, that in case of death of the tenant, the contract is not terminated if among the heirs there is someone who has exercised and will continue to exercise farming activity as a professional agricultural entrepreneur or direct farmer.

As previously mentioned, the reason behind the special regulations for the succession of agricultural land and/or holding is the need to preserve the integrity of the farm business. Said integrity is guaranteed by our legal system also in those cases in which a succession in the land ownership right is not at stake (as for instance in case of succession in agricultural contracts).

Succession as far as assets are concerned is strictly linked to the continuous exercise of the farming activity in entrepreneurial form (which is in fact the prerequisite for completion of the transfer of ownership). The system guarantees certain subjects deemed worthy of protection, not because they are considered weak but rather because they are significantly dedicated to the productive phenomenon in agriculture. This is the reason for the analogy between succession in a farm business managed by the owner of lands included in it, and succession in agricultural contracts.

[15] Giuffrida 2018, 173; Sciaudone 2004, 231.
[16] Gerbo 2007, 1269.

7. Rules of acquisition/holding of land by domestic and foreign legal persons

Agricultural activity, which historically in Italy has mainly taken the form of sole proprietorships or family businesses, can also be exercised under other corporate forms.

There is a specific regime for agricultural undertakings, irrespective of the dimension and legal form of the business, including capital companies, and of the nationality of the farmer or of the managers and shareholders of the company. Generally speaking, agricultural undertakings benefit from exclusion from the usual bankruptcy rules, a special tax regime, favorable pension contributions, and special rules for the direct sale of agricultural products.

There are no limitations in Italian law on the acquisition of agricultural companies and/or agricultural holdings by foreign persons, both individuals and companies.

Foreign investments or ownerships of farm property are neither supervised nor forbidden. As a result, foreign investment is not subject to any specific government approval or consent from a public authority before any shares are acquired in a domestic agricultural company. However, the acquisition of a farm property may be subject to general rules related to ownership acquisition and planning and environmental rules applicable to any other property.

The aforesaid implies that farms can certainly also be set up in the form of limited companies. In fact, our legal system provides for the possibility that an S.r.l. (Limited liability company), S.r.l.s. (Simplified limited liability company), and S.p.a. (limited companies) may take the status of 'Farm', provided, however, that they meet the following three essential requirements: a) exclusive exercise of farming activities and related activities; b) compulsory indication of 'Farm' status; and c) possession of certain professional qualifications.

As to the third and last requirement, pursuant to Article 1 of Leg. Decree no. 99/2004, at least one director must be a professional farmer (or a direct farmer if he also meets the requirements for being a professional farmer). In view of the possibility that, in limited companies, the administration may also be entrusted to non-members, this could lead to the case of an agricultural company in which none of the partners is an agricultural entrepreneur or direct farmer. Even in the case of a single-member company, the presence of at least one director with the above-mentioned requisites allows the company to qualify as a farm and gain access to the related benefits.

It should also be noted that the qualification of professional agricultural entrepreneur can be conferred by the director to only one company, in order to avoid the creation of fictitious administrative offices with the sole purpose of obtaining the benefits due to farms.

As far as land acquisition and use is concerned, agriculture property transactions are mainly regulated by domestic legislation. Agriculture property legislation is provided in both the Italian Civil Code and in specific regulations. Properties functional to the agricultural activity, including instrumental constructions intended for office use of the farm and rural housing, should be considered agricultural property.

Most of the benefits are related to the taxation applying to the acquisition of agricultural properties; in this case, such properties are exempted from VAT and the registration fee is reduced (i.e., equal to 9 per cent in case of acquisition by a professional farmer and 15 per cent for acquisition by a non-professional farmer).

On the other hand, Law no. 203/1982 sets out the specific rules applicable to the lease of agriculture properties. This Law regulates several aspects, including the duration and termination of leases, the conditions under which such properties may be transferred to another owner, and the right of first refusal of the tenant if the landlord intends to lease the property to third parties.

To acquire the right of use of the land, it is possible to purchase a property right (or usufruct) on it, or it is possible to acquire the right of use for a particular time through a lease. Leases are governed, in addition to the Civil Code, by the above-mentioned Law no. 203 of 3 May 1982, which provides complex regulations in relation to the lease of rural land.

There are no statutory restrictions on the acquisition of agricultural land (or usage rights) by a foreigner, or on the transfer of acquired land and rights by foreign investors to other parties (Italian or foreign).

The general maximum duration applicable to agricultural lease contracts is 30 years (*Article 1573, Civil Code*), with the exception of a lease contract for land to be reforested whose maximum duration is up to 99 years (*Article 1629, Civil Code*). Law no. 203/1982 regulates all contracts for the rental of rural land, setting a minimum normal duration of 15 years and a fixed amount of rent to be established by an administrative commission that operates on a local basis. However, the parties can enter a lease for a shorter duration and for a higher rent than that set by the administrative commission if the contract is carried out with the assistance of the farmers' unions (*Article 45, Law no. 103 of 1982*). Finally, the judgments of the Constitutional Court have declared that the provisions of Law no. 203 of 1982, which fixed agricultural rents through administrative procedures, were contrary to the Italian constitution (*Constitutional Court Decisions no. 318 of 5 July 2002 and no. 315 of 28 October 2004*). Parties are therefore free to determine the amount of the rent, even if not assisted by the farmers' unions. (Law no. 203/1982 also contains rules on the powers of the parties make improvements, additions, and transformations of the production systems to the rented land, together with an administrative procedure to be followed in the case of disagreement between the parties, which is unaffected by these decisions.)

The ownership of agricultural land can be freely transferred through sale or donation, inheritance, adverse possession (*usucapio*), and judicial decision. The usual formal requirements apply: A sale must be made in writing, and a donation must be in the form of a public deed, entered into before a notary, under penalty of nullity.

There are no mandatory tenders or prior approval procedures from public authorities necessary for the sale or purchase of agricultural land. However, there is a right of first refusal (right to be preferred) for the direct farmer who is already the tenant of the land or for the owner of the neighboring land if that person is a direct farmer.

In both cases, the seller, before selling the land to a third party, must communicate in advance to the tenant of the land, if in possession of the subjective and objective requirements provided for by Law no. 590 of 1965 and subsequent amendments, the terms and conditions of the sale, including the name of the buyer, the selling price, the methods of payment, and any other conditions of sale.

The tenant or the owner of the neighboring land has 30 days to decide whether to buy the land under these conditions (that is, to exercise the right of first refusal). If before the sale to a third party, the owner does not notify the tenant or the owner of the neighboring property of any notice, they have the right, within one year of the sale, to ask the court for the judicial transfer of the landed property (right of redemption).

As for the taxes due and the possible tax benefits, it must be noted that the sale and transfer of agricultural land ownership is subject to registration tax (*imposta di registro*), mortgage tax (*imposta ipotecaria*), cadastral tax (*imposta catastale*), and stamp duty (*imposta di bollo*), but that the buyer in possession of the requisites required by the specific regulations can benefit from reduced taxes. The Revenue Agency stated in June 2020 that the transfer of agricultural land and related matters carried out in favor of direct farmers and professional agricultural entrepreneurs (registered as such for social security and welfare management) is subject to registration tax of 9 per cent (instead of the normal rate of 15 per cent) on the conveyance deeds transferring ownership of the real estate (with a minimum of EUR1,000). Farmers or professional agricultural entrepreneurs pay a fixed amount for registration and mortgage taxes (eur 50) and are exempt from stamp duty (and cadastral tax is at 1 per cent).

The seller and purchaser are jointly liable for tax, although typically the buyer pays.

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Enikő KRAJNYÁK*

Summary of the 'Protection of Future Generations in Central Europe: Good Practices and Developments at Constitutional Level and Current Challenges in the Legal Order' Conference Organized by the Central European Academy of the University of Miskolc as Part of the Central European Professors' Network 2022

Abstract

On November 24, 2022, the Central European Academy organized a high-profile international conference entitled 'Protection of Future Generations in Central Europe: Good Practices and Developments at Constitutional Level and Current Challenges in the Legal Order' as part of the Central European Professors' Network 2022. The conference was the coronation of the one-year cooperation of several researchers from seven countries of the Central European region (Croatia, the Czech Republic, Hungary, Poland, Serbia, Slovakia and Slovenia), who were conducting research under the guidance of János Ede Szilágyi on the topic of the constitutional framework for the protection of future generations and the environment. The most significant outcomes of the research include a book titled 'Constitutional Protection of the Environment and Future Generations – Legislation and Practice in Certain Central European Countries' to be published in January 2022; several scientific articles and dissemination events; as well as two international conferences, one of them being the present event. The research group for the constitutional framework for the protection of future generations and the environment is one of the five research groups currently working under the aegis of the Central European Professors' Network 2022. This contribution summarizes the presentations at the conference and reflects on the work of the research group.
Keywords: Central European Professors' Network, Central European Academy, future generations, protection of the environment, sustainable development, constitutional rights

Introduction

The international conference entitled *'Protection of Future Generations in Central Europe: Good Practices and Developments at Constitutional Level and Current Challenges in the Legal Order'* was organized on November 24, 2022, in the Eperjes Hall of the University of Miskolc. The aim of the conference was to summarize the results of the research group *'Constitutional framework for the protection of future generations and the environment'* working within the frames of the Central European Professors' Network 2022. The conference was divided into three panels. The first panel was opened by István Olajos (University of Miskolc). He was followed by Zoltán Varga (University of Miskolc); János Ede Szilágyi (University of Miskolc, Ferenc Mádl Institute of Comparative Law – FMI); Gyula Bándi

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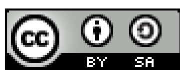

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(Ombudsman for Future Generations of Hungary, Péter Pázmány Catholic University); Anikó Raisz (University of Miskolc); and Bartosz Rakoczy (Nicolaus Copernicus University in Torun). Moderated by János Ede Szilágyi, the second panel discussed specific problems of public utilities, such as waste and water in different countries, and administrative aspects of adopting environmental acts. Speakers included Michal Maslen (University of Trnava); Miha Juhart (University of Ljubljana); Bartosz Majchrzak (Cardinal Stefan Wyszyński University in Warsaw); and Michal Radvan (Masaryk University in Brno). Each presentation was followed by coreferent speeches by Judit Pump (Péter Pázmány Catholic University); Károly Benke (Constitutional Court of the Republic of Romania); Zsófia Hornyák (University of Miskolc); and Zoltán Nagy (University of Miskolc, FMI). The third panel was moderated by Gyula Bándi, and discussed private legal, procedural and institutional questions arising from constitutional provisions related to the environment. The presentations were given by Sanja Savčić (University of Novi Sad); Frane Staničić (University of Zagreb); and Enikő Krajnyák (University of Miskolc, Central European Academy). The contributors to the coreferent speeches were Erika Farkas Csamangó (University of Szeged) and Attila Pánovics (University of Pécs).

Panel 1

The first panel of the conference was presided and moderated by István Olajos, Associate Professor at the Department of Labor and Agricultural Law at the host Faculty. After the words of welcome by Zoltán Varga, Vice-Dean of the Faculty, Ede János Szilágyi, the Head of the FMI and Head of the Department of Labor and Agricultural Law at the University of Miskolc, presented the outcomes and results of the Central European Academy (CEA), which provides support for the realization of the Central European Professors' Network, in the frames of which five research groups publish their work in the form of a book and various scientific articles, and organize conferences and dissemination events. The CEA began its work on January 1, 2022, and manages large-scale research and internship projects in Central European countries with the involvement of both senior and junior researchers. The cooperation embraces the active participation of forty-seven researchers from Croatia, the Czech Republic, Hungary, Poland, Serbia, Slovakia and Slovenia. The Professor stressed the high-profile publication activity of the Academy, which includes various book series (Studies of the Central European Professors' Network; Legal Studies on Central Europe; Studies of the Ferenc Mádl Institute; and Legal Heritage) and journals (Central European Journal of Comparative Law; Law, Identity and Values; and Central European Academy Law Review).

Gyula Bándi, Professor at the Péter Pázmány Catholic University and Ombudsman for Future Generations of Hungary, gave an overview of the *'Current Challenges in the Environmental Legal Order'*, pointing out the recent developments on the elaboration of the human right to a clean, healthy and sustainable environment at the UN level,[1] and the challenges that economic crises pose to the protection of the natural

[1] On the issue of recognition of the right to a healthy environment in international law, see: Marinkás 2020.

environment. He pointed out that the recently adopted UN General Assembly Resolution[2] recognizes the right to a clean, healthy and sustainable environment as a human right, but – apart from the non-binding nature of the resolution – further questions shall be answered in connection with this right. Defining what is clean exactly, and how it could be measured, the understanding of 'healthy' – healthy for humans or the flora and fauna – and its measurement, as well as 'sustainability' are questions to be answered in the near future, in order to implement this right in practice. Furthermore, the Professor drew attention to the importance of long-term and comprehensive thinking in making environmental decisions but also highlighted that crises were often used as an excuse to avoid addressing environmental problems.

Anikó Raisz, Head of the Department of International and Comparative Law at the host Faculty, presented the general directions, objectives and measures already taken and to be taken in the field of sustainability, the consistency between economic growth and environmental protection, as well as the comprehensive environmental goals of the Hungarian government in her speech entitled *'Government directions in the field of sustainability and environmental protection'*. The Professor highlighted the importance of the protection of the environment in Hungarian policy-making on the example of the ambitious goal of becoming one of the five EU Member States by 2030 where it is the best to live and work. To this end, Hungary adopted its Climate and Nature Protection Action Plan and its National Sustainable Development Strategy.

In the following presentation *'Good practices and 'de lege ferenda' proposals concerning constitutional protection of future generations'*, Ede János Szilágyi summarized the results of the research group. The specific subjects of the comparative research were grouped around definitions (the definition of the environment, natural resources, future generations, sustainable development), the role of given actors (constitutional courts, ombudsmen, heads of state), the fundamental rights framework (the right to a healthy environment, the right to water, and public participation) and other selected issues (such as the question of liability for environmental damage, financial sustainability, added values deriving from the constitutional protection of Christian heritage). The Professor also pointed out certain potential future research directions, of which the role of the ombudsmen was underpinned by several researchers, especially the question of the establishment of a sui generis green ombudsman and its competencies towards private sector actors.

The greatest achievement of the research group was the creation and publication of the book entitled *'Constitutional Protection of the Environment and Future Generations – Legislation and Practice in Certain Central European Countries'*, which was introduced by Bartosz Rakoczy, Head of the Department of Environmental and Public Economic Law at the Nicolaus Copernicus University in Torun. The book contains country-specific studies on the constitutional framework for the protection of future generations and the environment on the seven members of the Professors' Network program and Romania, as well as theoretical chapters on sustainable development and the moral and legal implications on the responsibility towards future generations; and the international legal background for the protection of the environment in human rights law through selected judgments of the ECtHR. The Professor highlighted the importance of scientific

[2] UN GA A/76/L.75 (July 26, 2022).

discussion about future generations and the uniqueness of this cooperation of Central European scientific communities. Professor Rakoczy spoke appreciatively about the book and pointed out that it was a valuable contribution to academia and would serve as a reference point for future research in the field of environmental law.

Panel 2

The second panel of the conference was opened by János Ede Szilágyi, who introduced the authors of the book and the members of the research group. The presentations of the authors were based on their scientific articles written in the framework of the Professors' Network and focused on country-specific issues within the constitutional protection of future generations and the environment. The presentations were followed by so-called coreferent speeches by renowned Hungarian experts, in which the speakers reflected on the broader topic and context of the presentation and its embeddedness in the research field. The first presenter of the second panel was Michal Maslen, Head of the Department of Administrative, Environmental and Financial Law at the University of Trnava, who gave his thoughts on *'Waste management and its possible development in the Slovak Republic'*. The Professor analyzed the climate impacts of individual waste management activities within the waste management hierarchy and pointed out its potential to be utilized in the energy sector through waste-to-energy plants, which has particular importance in light of the recent pandemic crisis. The coreferator of the presentation, Judit Pump, Lecturer of the Péter Pázmány Catholic University explained the impact of sustainability in regulating waste management and gave a short overview of the Hungarian waste management model.

Professor Miha Juhart from the University of Ljubljana analyzed a unique provision of the Slovenian Constitution in his presentation entitled *'The right to safe drinking water in international law and in Slovenia's legal framework and implementation'*. The Professor highlighted that the declaration of the right to drinking water as a fundamental right was important on a symbolic level but its practical implementation needed further legislative measures.[3] The fact that water resources are public goods and thus they shall not be a market commodity, raised several practical questions in Slovenia the last years – the conflict between ensuring drinking water to the population and maintaining ecological balance, or the issue of suspension of drinking water supply due to non-payment – as pointed out by the Professor. Károly Benke, Assistant Magistrate–in–Chief of the Romanian Constitutional Court, gave a coreference to the presentation and discussed the challenges of regulating the right to drinking water in international law, focusing on its interrelation with other human rights and the substantive and procedural aspect of this fundamental right.

The presentation entitled *'Constitutional framework for planning acts as legal forms of administration's activity in environmental protection – on the example of Poland'* was given by Bartosz Majchrzak, Head of the Department of Administrative and Environmental Law at the Cardinal Stefan Wyszyński University in Warsaw. The Professor emphasized that

[3] For an extensive overview on water law, see: Szilágyi 2018. The current issues of the right to water were analyzed in Raisz 2012. The right to water from a social perspective was also analyzed in Jakab & Mélypataki 2019.

'planning acts' constituted an important instrument for conducting environmental protection policies in Poland, for which also the Polish Constitution provided a detailed normative framework.[4] The Constitution allocates the powers to issue planning acts between the Council of Ministers and local governments, which shall be combined with cooperation between public powers in the event of overlapping competencies. Apart from systemic determinants, the Constitution also provides substantive and procedural criteria, which encompass the principle of proportionality and sustainable development, as well as public participation in the decision-making process. The coreference was given by Zsófia Hornyák, Lecturer at the Department of Labor and Agricultural Law at the host university, who presented the planning of environmental acts in Hungary through the example of the adoption of the National Environmental Protection Program.[5] The Program is a comprehensive national strategic plan of the environmental sector, which serves as a framework for all environmental strategies, programs and plans, including the National Strategy for Biodiversity Conservation, the National Water Strategy, the National Waste Management Plan, the River Basin Management Plan of Hungary, the National Environmental Remediation Program, the National Air Pollution Reduction Program, and the National Nature Conservation Fund Program.

Michal Radvan, Vice-Dean for Foreign and External Affairs at the Faculty of Law of the Masaryk University in Brno delivered his presentation on the topic of *'New Charges on Communal Waste in the Czech Republic'*. The Professor described and compared the old and new methods of communal waste charging, given that the regulation had significantly changed in 2022, which had introduced the charge for the disposal of municipal waste from immovable property, which, according to the Presenter, shall be preferred and considered a good practice. Charges on communal waste are embedded in the broader category of environmental taxes and charges. Therefore, the coreferator, Zoltán Nagy, Professor at the Department of Financial Law at the host Faculty and Head of the Department of Public Law at the FMI, reflected on the general problems and benefits of environmental taxes.[6] The Professor emphasized that taxes could provide incentives for the application of new technologies which may lead to the reduction of pollution. On the other hand, one shall take into account that environmental taxes do not directly guarantee positive effects and the impact of these taxes could often be unforeseen. Nevertheless, exchanging ideas about already existing measures and good practices was certainly useful for environmental legal experts.

Panel 3

During the third panel, moderated by Gyula Bándi, private law issues and participatory rights were discussed, as well as the institutional protection of future generations. Sanja Savčić, Associate Professor at the Department of Civil Law at the University of Novi Sad, focused on the potential of private law rights to contribute to

[4] For an analysis on the constitutionalisation of environmental protection in Poland, see: Rakoczy 2021.

[5] Available at: https://környezetvédelem.hu/nemzeti-kornyezetvedelmi-program (Accessed: 4 December 2022).

[6] For an introduction to environmental taxes by the Professor, see: Nagy 2013.

environmental protection and improvement in her presentation entitled *'Private Law Aspects of Environmental Protection and Sustainable Development – Where Is the Line Between Public and Private Interests?'*. The Professor pointed out several direct and indirect links to environmental protection in the Serbian regulation, with a special focus on intellectual property law, namely on the patent regulation of environmentally sustainable technologies, and indications of geographical origin. The Presenter concluded that cooperation between scientific research institutions and the industry is a crucial factor in channeling environmental aspects in the private legal sector.[7] As a coreferator of the presentation, Erika Farkas Csamangó, Lecturer at the Institute of Business Law at the University of Szeged shared her thoughts on green innovation and sustainability in the European and Hungarian law. The Coreferator drew attention to the topicality of the issue analyzed by the Professor and emphasized the significance of the regulation of eco-innovation for the sustainable use of natural resources and the protection of the interests of future generations.

The topic of *'Public participation and access to justice in environmental matters in Croatia'* was introduced by Frane Staničić, Professor at the Department of Administrative Law at the University of Zagreb. The Professor pointed out that the duty to protect the environment that derived from the constitutional right to a healthy life was often achieved through participation in administrative procedures.[8] Apart from the general rules of administrative procedure, public participation is also regulated specifically in environmental matters by the Aarhus Convention, which is in force in Croatia as well. The Convention defines the notion of the 'public' and the 'public concerned', which certainly extends the scope of subjects in administrative environmental procedures. Furthermore, the Presenter explained the regulation and implementation of public participation through the example of spatial planning, which also encompasses the legal obligation to inform the public about the making of spatial plans and enable a public debate. However, the Professor also mentioned that the practical impact of public participation was rather limited, as the carrier of the spatial plan was not obliged to take these objections into account. Attila Pánovics, Lecturer at the Department of International and European Law at the University of Pécs shared his thoughts as a corefererator on the importance of the implementation of the Aarhus Convention and the involvement of civil society in environmental decisions through procedural rights. The Coreferator also mentioned a practical example, namely that a non-governmental organization of which He is a member, recently won an environment-related case before the court, and thus pointed out that the public shall raise its voice in order to protect the environment and future generations.

The last presenter of the panel, Enikő Krajnyák, Researcher at the Central European Academy, introduced the office of the Hungarian Ombudsman for Future Generations in her presentation titled *'The role and activity of the Deputy Commissioner for Fundamental Rights Ombudsman for Future Generations in shaping environmental protection in Hungary'*. As mentioned before by János Ede Szilágyi, several authors of the book considered the work of a green ombudsman a good practice, which is a unique solution

[7] For an overview on how sustainable development could influence other private regulations, namely human resources, see: Jakab 2016.
[8] On the Croatian constitutional approach to environmental protection, see: Ofak 2021.

not only among the countries examined in the volume but also all over the world: the Presenter pointed out that there were only a few institutions worldwide that explicitly advocated for the interests of future generations. The importance of the institutional representation of future generations cannot be emphasized enough, as numerous international documents declare the moral responsibility of preserving natural resources for the benefit of future generations, but the practical implementation of such declarations faces difficulties in practice, mainly for the reason that they cannot represent themselves under the current legislative framework.[9] The Hungarian Ombudsman has a wide range of competencies through which he can influence environmental regulation in the country. The Presenter mentioned several key Constitutional Court decisions and legislative proposals which had had a significant impact on the protection of the environment in the dogmatics and in practice as well. As the author concluded, the Hungarian institution could serve as a role model for similar institutions to be established in the future, and emphasized that despite the difficulties of implementation, endeavors to include a future-generations perspective in decision-making shall not be hindered at any level. The panel and the conference were concluded with some remarks from Gyula Bándi, the incumbent Ombudsman for Future Generations.

Summary

The international conference *'Protection of Future Generations in Central Europe: Good Practices and Developments at Constitutional Level and Current Challenges in the Legal Order'* was organized as part of the Central European Professors' Network 2022. The event aimed to bring together the members of the research group working on the topic of *'Constitutional framework for the protection of future generations and the environment',* in order to discuss the most topical issues of the given countries in connection with the protection of the environment or future generations.

The first panel of the conference granted space for the introduction of the research and the general framework for environmental protection as well as the presentation of the achievements of the research group. The preparation of the book entitled *'Constitutional Protection of the Environment and Future Generations – Legislation and Practice in Certain Central European Countries'* was certainly the most significant contribution from the researchers. The second and third panels provided an opportunity for the contributors to present their individual research results in the form of short presentations, which were reflected by acknowledged Hungarian experts and scholars on the given topic. The problems of waste management in Slovakia were presented by Michal Maslen; the Slovenian legal framework and the implementation of the constitutional provision on the right to drinking water were discussed by Miha Juhart; the constitutional regulation of planning acts with regard to environmental protection was analyzed by Bartosz Majchrzak; and the new regulation on communal waste in the Czech Republic was introduced by Michal Radvan. In the third panel, further topics were explored, namely the private law aspects of sustainable development in Serbia by Sanja Savčić; public participation and access to information in environmental matters in Croatia by Frane

[9] The responbility towards future generations and its embeddedness in the Hungarian constitutional framework is analyzed in Bándi 2020, Szilágyi 2021a and Szilágyi 2021b.

Staničić; and the institutional protection of future generations in Hungary by Enikő Krajnyák. The conference provided a precious opportunity for outstanding researchers of the Central European region to exchange best regulatory practices that could be used for the benefit of present and future generations.

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