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Agricultural land succession rules in the Visegrád countries and the relevant  
case-law of national constitutional courts\*\*

*Abstract*

*This study aims to review and compare the agricultural land succession rules in four countries of the Central European region, namely Slovakia, the Czech Republic, Poland, and Hungary (the Visegrád countries), using a comparative method. The results show that, in the case of Slovakia and the Czech Republic, there are no specific rules on the inheritance of agricultural land; the general succession rules of civil law shall be applied. The same is true in Poland, where there are no specific regulations that differentiate the inheritance of agricultural property or farms from other types of property. However, some specific rules can be found in the Act of April 11, 2003, on the Shaping of the Agricultural System. On the contrary, in the case of acquiring ownership of agricultural land by inheritance, in addition to acquiring it by testamentary disposition, the Hungarian legislator introduced several special rules for acquiring it by intestate succession. Furthermore, in connection with the research topic, the inheritance tax issues, and the relevant case-law of the national constitutional courts are examined in detail.*

**Keywords:** succession, agricultural land, land law, national land law, Visegrád countries

## 1. Introduction

In recent years, various Member States have witnessed a decline in the number of active farmers, particularly among the younger generations, attributable to technological, social, and economic transformations. Furthermore, European farming is facing the menace of an increasingly intensive concentration process. As a result, the subject of succession has become a significant priority for the Common Agricultural Policy of the EU (hereinafter referred to as the CAP) and the plans of the European Commission. Numerous political discussions are ongoing to introduce initiatives that aid young farmers in establishing and guaranteeing long-term sustainability and profitability of their activities.<sup>1</sup>

Currently, economic and legal tools are primarily used to support European agriculture. At this point, it should be highlighted that the CAP employs a financial instrument to incentivize the establishment of farms for young farmers through

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<sup>1</sup> Palšová, Bandlerová & Ilková 2022, 130–131.



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payments.<sup>2</sup> Not only in European but, for example, in African countries as well, acquiring land and capital is a significant challenge for both new ‘entrants’ and farming successors.<sup>3</sup> Research suggests that the likelihood of young people engaging in farming is closely tied to their expected land inheritance because family succession is the most prevalent way of entering farming in both regions.<sup>4</sup> Although succession within the family is the most common way of entry into farming, it should be highlighted that access to land is limited due to several factors, including a lack of opportunities for inheriting land from parents; a low supply of land available for sale or lease; and competition from other farmers, investors, and residential users, which increases land prices.<sup>5</sup> The rising value of agricultural land has made farmers hesitant to sell or transfer control to the next generation. The increasing costs of starting and running a business and the challenges in accessing capital are commonly identified as obstacles to generational change.<sup>6</sup>

In agreement with the general statements found in the scientific literature on this subject matter, state intervention is necessary to preserve farms through legal regulation of succession and to create a supportive environment for successors to continue agricultural production effectively. Moreover, the state should specifically regulate the legal succession of agricultural holdings and land when developing long-term sustainable agricultural concepts.<sup>7</sup>

In this respect, this study examines the rules in Visegrád countries<sup>8</sup> regarding the succession of agricultural lands. Furthermore, concerning the research topic, the inheritance tax issues, and the relevant case-law of the national constitutional courts will also be examined.

## 2. Slovakia

In Slovakia, there are no specific rules on the inheritance of agricultural land.<sup>9</sup> The general succession rules of Act No. 40/1964 Coll., the Civil Code, as amended<sup>10</sup> (hereinafter referred to as the Slovak Civil Code) apply to such cases.<sup>11</sup>

The rules on succession are set out in Sections 460–487 of the Slovak Civil Code. Generally, in Slovakia, succession passes through the operation of law, by will, or both.<sup>12</sup> It can therefore be concluded that the Slovak legal system recognizes the testator’s total freedom of testamentary disposition beyond intestate succession, a principle that is also

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<sup>2</sup> In this respect, see the compulsory scheme of young farmer payment that Member States are obliged to implement.

<sup>3</sup> Žmija et al. 2020, 2.

<sup>4</sup> Leonard et al. 2017, 147–149. See also: FAO 2012.

<sup>5</sup> Žmija et al. 2020, 2.

<sup>6</sup> Beckers et al. 2018; Meyer 2015.

<sup>7</sup> Palšová, Bandlerová & Ilková 2022, 131.

<sup>8</sup> For the rules of acquisition of ownership of agricultural land in the Visegrád countries, see Csirszki, Szinek Csütörtöki & Zombory 2021, 29–52.

<sup>9</sup> Regarding the detailed rules on the succession of agricultural land in the Slovak Republic (in Hungarian), see Szinek Csütörtöki 2023, 91–104. See also Szilágyi & Szinek Csütörtöki 2022a, 271.

<sup>10</sup> Zákon č. 40/1964 Zb., Občiansky zákonník.

<sup>11</sup> Slovak Civil Code, Part 7.

<sup>12</sup> Slovak Civil Code, Section 461(1).

taken into account by the Slovak Civil Code. The Slovak legal system does not provide for any other title of succession, and the rules in force therefore exclude succession by inheritance contract or the joint will of multiple persons.<sup>13</sup>

Regarding intestate succession, the Slovak Civil Code considers the persons closest to the testator to be legal heirs. These individuals are related to the heir through blood, marriage, or other close personal relationship. Therefore, they usually lived in the same household as the deceased, shared property, and often looked after them. It should be highlighted that an amendment to the Slovak Civil Code, effective from January 1, 1992,<sup>14</sup> added a fourth class to the existing three types of heirs and extended the third class<sup>15</sup> to include children of siblings, that is, nephews and nieces.<sup>16</sup>

In Slovakia, intestate succession takes primacy over testamentary disposition. From a social perspective, it seems 'fairer' and better promotes the strengthening of family ties, as it is easier to remember the closest relatives or people in a similar relationship to the testator, who often contributed together with the testator to the creation of the assets that are the subject of the succession.<sup>17</sup> The tendency towards favoring intestate succession is particularly emphasized by the provision of Section 479 of the Slovak Civil Code, which protects 'forced heirs' (*neopomenuteľný dedič*). According to this regulatory provision, minor descendants must receive at least as much as their share of the estate under the law, whereas descendants of age must receive at least half of their share. In the case of a will that contradicts the abovementioned rules, the relevant part of the will is void unless the specified descendants have been disinherited.<sup>18</sup>

As mentioned earlier, in the case of intestate succession, the Slovak legislator defines four classes (*dedičské skupiny*) of heirs.

Regarding the first class, the deceased's children and spouses are each entitled to inherit in an equal share.<sup>19</sup> It can be stated that in the case that any of the children do not inherit, their share shall be acquired by his/her children (they shall inherit equal shares).<sup>20</sup> If the deceased person has no descendants, or if their descendants do not inherit, the second class becomes relevant. The second class of legal heirs includes the spouse, the deceased's parents, and anyone who had lived with the deceased person in a common household for at least one year before his/her death and, for this reason, took care of the typical household or were dependent on the deceased person for maintenance.<sup>21</sup> The heirs in this group inherit in equal shares; however, it is worth highlighting that the spouse must always inherit at least one-half of the inheritance.<sup>22</sup> If the heirs of the second class do not inherit equal shares, then the heirs of the third class shall inherit.

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<sup>13</sup> Fekete 2011, Section 461.

<sup>14</sup> Act No. 509/1991 Coll. (Zákon č. 509/1991 Zb., ktorým sa mení, dopĺňa a upravuje Občiansky zákonník).

<sup>15</sup> The Slovak Civil Code uses the term 'group' (*skupina*).

<sup>16</sup> Plank et al. 2009.

<sup>17</sup> This is also confirmed by the wording of Section 461(2) of the Slovak Civil Code. For further, see Plank et al. 2009.

<sup>18</sup> Slovak Civil Code, Section 479.

<sup>19</sup> Slovak Civil Code, Section 473(1).

<sup>20</sup> Slovak Civil Code, Section 473(2).

<sup>21</sup> Slovak Civil Code, Section 474(1).

<sup>22</sup> Slovak Civil Code, Section 474(2).

This class includes the deceased's siblings and anyone who had lived with the deceased person in the same household for at least one year before their death and took care of the home or was dependent on the deceased person for maintenance.<sup>23</sup> The fourth class becomes relevant when none of the deceased's siblings inherit; their share of the inheritance is distributed equally among the children of that sibling.<sup>24</sup> Given that the intestate succession ends with the fourth class, the other persons can no longer be legal heirs. It is also worth noting that if no heir acquires an inheritance, it passes to the State.<sup>25</sup>

Regarding testamentary disposition, it should be noted that under Slovak law, neither inheritance contracts nor joint will<sup>26</sup> are permitted. The Slovak legislator provides three ways of making a will<sup>27</sup>: a holographic will (handwritten will), an allographic will<sup>28</sup> (will using a different method of writing), and a will in notarized form.

Although there are no specific rules applicable to the inheritance of agricultural land in Slovakia, we draw attention to Act No. 180/1995 Coll. on Certain Arrangements for the Holding of Land, as amended,<sup>29</sup> which prohibits an inheritance decision resulting in the division of existing land outside the built-up area of the municipality;<sup>30</sup> this applies to land of less than 3000 m<sup>2</sup> in the case of agricultural land and 5000 m<sup>2</sup> in the case of forest land.<sup>31</sup>

A further restriction on the transfer of ownership of agricultural land also arises from the relevant provisions of Act No. 97/2013 Coll. on Land Associations, as amended,<sup>32</sup> according to which the transfer of shares in joint property may not result in a co-ownership share on common property that corresponds to an area of less than 2000 m<sup>2</sup>. Furthermore, the merging of claims may result in a share corresponding to an area of less than 2000 m<sup>2</sup>.<sup>33</sup>

To sum up the above-mentioned, the heirs can be both natural and legal persons.<sup>34</sup> However, as previously stated, who can be an heir depends on the title of the succession. In the case of intestate succession, only natural persons can become heirs. If there are no heirs, the estate is passed on to the State by default. In the case of testamentary disposition, both natural and legal persons can be heirs. It should also be noted that, in Slovakia, there is no land acquisition limit according to current legislation. However, in probate proceedings, provisions prohibiting the fragmentation of agricultural and forestry land must be considered.

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<sup>23</sup> Slovak Civil Code, Section 475(1).

<sup>24</sup> Slovak Civil Code, Section 475(2).

<sup>25</sup> Slovak Civil Code, Section 462.

<sup>26</sup> Slovak Civil Code, Section 476(3).

<sup>27</sup> Slovak Civil Code, Section 473.

<sup>28</sup> For example, by computer.

<sup>29</sup> Zákon č. 180/1995 Z. z. o niektorých opatreniach na usporiadanie vlastníctva k pozemkom

<sup>30</sup> Except for vineyards. On the exception, see Martvoň 2021, 104.

<sup>31</sup> Act No. 180/1995 Coll. on Certain Arrangements for the Holding of Land, Section 23(1). It should be noted that the amendment has been in force since September 1, 2022. Until August 31, 2022, the limit – as regards the agricultural land – was 2000 m<sup>2</sup>.

<sup>32</sup> Zákon č. 97/2013 Z. z. o pozemkových spoločnostiach.

<sup>33</sup> Act No. 97/2013 Coll. on Land Associations, Section 2(3).

<sup>34</sup> While they must have legal capacity (see Section 7 of the Slovak Civil Code) and be entitled to inherit (for example, they cannot be disinherited).

As regards the tax issues, it can be stated that Slovakia does not impose an inheritance tax, as it was abolished as of January 1, 2004. In addition, according to Act No. 595/2003 Coll. on Income Tax, as amended,<sup>35</sup> income from the sale of immovable property is exempt from tax if anything acquires the immovable property by inheritance in direct succession (such as from parents) and the sale takes place after the expiry of a five-year period from the acquisition of ownership of the immovable property or co-ownership of the testator(s).<sup>36</sup>

### 3. The Czech Republic

In the Czech Republic, similar to Slovakia, the general succession rules of Act No. 89/2012 Coll., the Civil Code, as amended (hereinafter referred to as the Czech Civil Code)<sup>37</sup> apply.<sup>38</sup> Therefore, general rules apply to agriculture provided that they do not obstruct the continuous fragmentation of agricultural land. This fragmentation is considered one of the primary reasons owners rent out land instead of farming it. Furthermore, the law does not prohibit the inheritance of land by foreign citizens across borders based on the legal hierarchy of succession or inheritance agreements made during the testator's lifetime.<sup>39</sup>

It is worth mentioning that until 2011, it was not possible for foreigners, including both natural and legal persons, to purchase agricultural land in the Czech Republic, except for a few exceptions. These exceptions included foreigners who had Czech citizenship or were married to a Czech citizen, who inherited the land or had preemptive rights from co-ownership, who could not separate the land from another asset already owned by the foreigners or exchange it for domestic land, and EU-citizen farmers who were registered as self-employed and permanently staying in the Czech Republic for at least three years. Eligibility conditions have eased since November 2010, with the only requirement being official registration as a farmer. Individuals who are natural residents of the Czech Republic and have been farming on leased land for a minimum of three years, as well as Czech legal entities that combine both domestic and foreign capital, have been allowed to purchase private agricultural land, provided they can demonstrate their integrity, professional farming knowledge, and proficiency in the Czech language. However, since November 2010, the Czech government eased the eligibility criteria for foreigners seeking to purchase private or state-owned land. Previous requirements of permanent residency, three years of farming experience, and language and farming knowledge were eliminated.<sup>40</sup>

The rules of succession are set out in Sections 1475–1720 of the (new) Czech Civil Code. It can be stated that succession passes by operation of law, by will, or by an inheritance contract. Similar to Slovak law, Czech legislation does not recognize succession by the joint will of multiple persons. However, succession by inheritance

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<sup>35</sup> Zákon č. 595/2003 Z. z. o dani z příjmov.

<sup>36</sup> Act No. 595/2003 Coll. on Income Tax, Section 9(1) point b).

<sup>37</sup> Zákon č. 89/2012 Sb., Občanský zákoník (nový).

<sup>38</sup> Szilágyi & Szinek Csütörtöki 2022b, 345.

<sup>39</sup> Vomáčka & Leichmann 2022, 132.

<sup>40</sup> Ciaian, Kancs, Swinnen, Van Herck & Vranken 2012, 9.

contract is allowed,<sup>41</sup> which is a bilateral act: the decedent designates the other party as the heir, and the other party must accept this designation. However, the heir's agreement is also necessary to cancel contracts. Regarding the form of the contract, it must always be in the form of a public document (*veřejná listina*) and may only cover up to three-quarters of the estate, with the remaining quarter to be decided through other means, such as a testament. In addition, the testamentary clause in a legacy is similar to a testament, but it does not appoint heirs. Instead, it is used to modify aspects, such as legacies, mandates, and determinations of time, that were not initially included in the testament.<sup>42</sup>

In the absence of an established order of succession in an inheritance agreement or will, the legal order of succession is determined by law through what is known as succession classes (*dědické třídy*).<sup>43</sup> At this point, the Czech legislator sets out six classes of heirs, while Slovakia sets out only four.

According to Czech law, in the first class of heirs, the deceased's children and spouse shall inherit each of them equally. If a child does not inherit them, their share in succession passes, in equal measure, to that child's children.<sup>44</sup> The second class includes the following persons: the spouse, the deceased's parents, and anyone who had lived with the deceased person in a common household for at least one year before his/her death and, for this reason, took care of the common household or were dependent on the deceased person for maintenance.<sup>45</sup> The heirs in this group inherit in equal shares; however, it is worth highlighting that the spouse must always inherit at least one-half of the inheritance.<sup>46</sup> It should be highlighted that if neither the spouse nor any of the parents inherit, the siblings of the deceased person and anyone who had lived with the deceased person in the same household for at least one year before their death and took care of the household or was dependent on the deceased person for maintenance shall inherit the third class in equal shares.<sup>47</sup> If no heirs in the third class inherit, the grandparents of the deceased inherit them equally in the fourth class.<sup>48</sup> The fifth class becomes relevant when no heirs of the fourth class are inherited. According to Section 1639 of the Czech Civil Code, only the grandparents of the deceased person's parents shall inherit in this class. The grandparents of the deceased person's father receive half the inheritance, and the grandparents of the deceased person's mother receive the other half. The two sets of grandparents equally share half that accrues to them.<sup>49</sup> If none of the heirs of the fifth class inherits, the children of the deceased's siblings and grandparents shall inherit in the sixth class, each in equal shares. If none of the children of the deceased's grandparents

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<sup>41</sup> Czech Civil Code, Sections 1582–1593.

<sup>42</sup> For detailed information, see an article by Radomír Ježek titled Last will, testaments and inheritance in Czech Republic.

<sup>43</sup> For more on this topic, see: Šešina 2019.

<sup>44</sup> Czech Civil Code, Section 1635.

<sup>45</sup> Czech Civil Code, Section 1636(1).

<sup>46</sup> Czech Civil Code, Section 1636(2).

<sup>47</sup> Czech Civil Code, Section 1637.

<sup>48</sup> Czech Civil Code, Section 1638.

<sup>49</sup> Czech Civil Code, Section 1639.

inherits them, their children will inherit them.<sup>50</sup> Similar to the Slovak regulation, if no heir acquires an inheritance, it shall pass to the State.<sup>51</sup>

Regarding the ‘forced heirs’ (*nepominutelný dědic*), the construction of the rights of forced heirs differs significantly from the previous regulation. Forced heirs became heirs by law if they asserted their rights under Section 479 of Act No. 40/1964 Coll., as amended,<sup>52</sup> the compulsory portion is now only understood as a claim of the forced heirs against the heirs, who are obliged to pay the compulsory amount in cash unless the deceased person provides otherwise, or unless the forced heir and heirs agree on another method of settling the compulsory portion.<sup>53</sup> The compulsory heir is no longer an heir unless the testator leaves them a share in the inheritance; they have the status of creditor of the heirs. The heirs are solely responsible for all estate debts.<sup>54</sup>

It can be concluded that the Czech succession law adheres to universal succession, meaning that the heir automatically assumes the deceased’s position, including their debts, regardless of the inheritance’s value. The heir has the option to renounce the entire inheritance or a portion thereof in favor of the other heirs. However, the heir cannot relinquish their right to inheritance in favor of a person who is not entitled to any inheritance asset. It should also be highlighted that the heirs can be both natural and legal persons. However, who can become an heir depends on the title of the succession.

Regarding the tax issues, it should be highlighted that the inheritance tax at the end of 2013 was abolished in the Czech Republic.<sup>55</sup> Since 2014, the regulation of inheritance (and also gift) taxes is no longer separate but rather incorporated under the income tax law. This means that inheritance tax is subject to progressive taxation, similar to other forms of personal income. However, this incorporation resulted in a significant increase in gift taxes compared with previous legislation. Note that exemptions may be available, such as total exemptions from inheritance taxes for certain persons.<sup>56</sup>

#### 4. Poland<sup>57</sup>

First of all, it can be stated that in Poland,<sup>58</sup> there are no specific regulations that differentiate the inheritance of agricultural property or farms from any other types of property.<sup>59</sup> It is worth mentioning that, previously, the Act of April 23, 1964, the Civil Code<sup>60</sup> (hereinafter referred to as the Polish Civil Code) contained such regulations. Still,

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<sup>50</sup> Czech Civil Code, Section 1640.

<sup>51</sup> Czech Civil Code, Section 1634.

<sup>52</sup> Zákon č. 40/1964 Sb., Občanský zákoník (starý).

<sup>53</sup> Czech Civil Code, Section 1654 (1), first sentence.

<sup>54</sup> Šešina 2019.

<sup>55</sup> Act No. 586/1992 Coll. on Income Tax (Zákon č. 586/1992 Sb. o daních z příjmu), Section 4a point a).

<sup>56</sup> Borkovec 2023.

<sup>57</sup> I would like to thank Katarzyna Zombory, PhD, senior researcher at the Central European Academy for her help and advice while preparing this subchapter.

<sup>58</sup> On the Polish legislation, see, for example: Zombory 2020, 282–305 and Zombory 2021, 174–190.

<sup>59</sup> Kubaj 2020, 123.

<sup>60</sup> Ustawa z dnia 23 kwietnia 1964 r. - Kodeks cywilny.

they were deemed unconstitutional by the Constitutional Tribunal (*Trybunał Konstytucyjny*) for violating, *inter alia*, the principle of equality<sup>61</sup> enshrined in the Constitution of the Republic of Poland of April 2, 1997.<sup>62,63</sup>

The Polish Civil Code regulates the inheritance of agricultural properties and farms only when the opening of the inheritance took place before February 14, 2001, that is, before the day the above-mentioned judgment of the Polish Constitutional Court came into force.

When a person inherits<sup>64</sup> agricultural land, it does not necessarily mean that they will retain it because of the National Agricultural Support Center's (hereinafter referred to as the NASC)<sup>65</sup> right to acquire such property. According to Article 4 of the Act of April 11, 2003, on the Shaping of the Agricultural System,<sup>66</sup> the NASC can purchase agricultural land resulting from inheritance or legacy by making a declaration of acquisition against the payment of its market value. It should be emphasized that this right of the NASC is not absolute and is subject to certain exceptions. For instance, it does not apply if agricultural real estate is acquired by a close relative of the seller or an individual farmer owing to a windup bequest. In addition, the NASC's right to acquire agricultural real estate is excluded in the case of statutory inheritance, in which the designated testamentary heir is an individual farmer.<sup>67</sup> This regulation protects family farms and ensures the appropriate management of agricultural land.<sup>68</sup>

The NASC's right to acquire agricultural real estate has been a subject of much uncertainty. However, it is noteworthy that the Constitutional Tribunal has examined Article 4 of the Act in question. According to the Tribunal's ruling on March 18, 2010, signature K 8/08<sup>69</sup>, this provision is in line with the Constitution of the Republic of Poland on April 2, 1997, and does not violate the principle of a democratic state of law<sup>70</sup> and the right to property.<sup>71</sup>

To understand this situation, we consider it necessary to emphasize that the Polish legislator has formulated strict rules on the acquisition of ownership of agricultural land. Since 2016, due to an amendment to the Act of April 11, 2003, on the Shaping of the Agricultural System, a twofold obligation has been imposed on the acquirer of agricultural property in Poland aimed at the utilization of agricultural land and preventing capital investments in such land, and also to ensure food security in the country.<sup>72</sup> According to the Act, the acquirer is required to run the agricultural holding to which the real agricultural property belongs for a minimum period of five years from the date of

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<sup>61</sup> See the Judgement of the Constitutional Tribunal of January 31, 2001, No. P. 4/99.

<sup>62</sup> Konstytucja Rzeczypospolitej Polskiej z dnia 2 kwietnia 1997 r.

<sup>63</sup> On the constitutional issues, see Blajer 2022.

<sup>64</sup> According to the Polish law, an estate may be inherited through intestate succession or testate. On this issue see further Oleśkowska 2023.

<sup>65</sup> Krajowy Ośrodek Wsparcia Rolnictwa (KOWR).

<sup>66</sup> Ustawa z dnia 11 kwietnia 2003 r. o kształtowaniu ustroju rolnego.

<sup>67</sup> Ledwoń 2022, 204–205.

<sup>68</sup> Kubaj 2020, 124.

<sup>69</sup> Wyrok Trybunału Konstytucyjnego z dnia 18 marca 2010 r. sygn. akt K 8/08.

<sup>70</sup> Constitution of the Republic of Poland of April 2, 1997, Article 2.

<sup>71</sup> Constitution of the Republic of Poland of April 2, 1997, Articles 21 and 64.

<sup>72</sup> Csirszki, Szinek Csütörtöki & Zombory 2021, 44.



acquisition.<sup>73</sup> During this period, the acquirer is prohibited from selling agricultural property or transferring possessions. However, these restrictions are not absolute as the Act provides various exemptions. These exemptions refer to the acquirer, the type of acquisition (e.g., by inheritance), or the location of the real agricultural property.<sup>74</sup> Even in the absence of statutory exemptions, the acquirer may still sell the land or transfer its possession within a five-year period if approved by the general director of the NASC. Such exemptions require justification based on the acquirer's important public interest. Failure to comply with the obligations outlined in Article 2b, paras. 1 and 2 may result in state control and scrutiny. If the acquirer fails to farm the land or violates the prohibition on disposal, the NASC, acting on behalf of the State Treasury, can request that the court enforce the buyout of the misused land.<sup>75</sup>

So, regarding the heirs, it doesn't matter (because the legislation places inheritance within the scope of exceptions) whether the inheritance results from an act or a will; they don't necessarily have to be individual farmers, nor do they have to meet the maximum area standard. Furthermore, in the case of a designation under will, not only a natural but also a legal person is entitled to inherit.<sup>76</sup>

Regarding testamentary disposition, it should be noted that under Polish law, a joint will is not prohibited. The Polish legislator provides four ways of making a will: a holographic will (handwritten will); a will in notarized form; a will made orally in the presence of two witnesses before the mayor of a municipality (*wójt*), the mayor of a town (*burmistrz*) or the head of a town council (*prezydent miasta*); and an oral will<sup>77</sup> in the presence of three witnesses.

It should also be highlighted that inheritance waiver agreements are the only type of agreements on succession recognized in the country. These agreements can be made by the future testator and the legal heir and must be in the form of a notarial deed to be considered valid.

Turning to the tax issues, it can be stated that in Poland, a common way for young farmers to obtain their initial agricultural land is through inheritance from their family members. The Polish government provides tax remissions if certain conditions are met to incentivize farmers to continue running farms. An essential act in connection with this topic is the Act on Tax Inheritance and Donations of July 28, 1983,<sup>78</sup> which states that the acquisition of agricultural land by natural persons is typically subject to an inheritance tax. However, it can be tax-free if the acquisition in the creation or enlargement of a farm has an area between 11 and 300 hectares, and the successor manages the farm for at least five years.<sup>79</sup> The Act of July 26, 1991, on Income Tax from Natural Persons<sup>80</sup> provides further tax relief by exempting the revenue from agricultural activities from personal

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<sup>73</sup> Act of April 11, 2003, on the Shaping of the Agricultural System, Article 2b Section 1.

<sup>74</sup> Csirszki, Szinek Csütörtöki & Zombory 2021, 45.

<sup>75</sup> Id. 45. See further: Ledwoń 2022, 206.

<sup>76</sup> Ledwoń 2022, 204.

<sup>77</sup> Only when death is imminent and it is impossible or very difficult to make a will in the ways described above.

<sup>78</sup> Ustawa z dnia 28 lipca 1983 r. o podatku od spadków i darowizn.

<sup>79</sup> Act of July 28, 1983 on Tax Inheritance and Donations, Article 4 Section 4 point 1.

<sup>80</sup> Ustawa z dnia 26 lipca 1991 r. o podatku dochodowym od osób fizycznych.

income tax. Additionally, young farmers can take advantage of exemptions under the Act of November 15, 1984, on agricultural tax,<sup>81</sup> which exempts land intended for creating or extending a farm up to 100 hectares from agricultural tax for five years. According to the Act of September 9, 2000, on taxes on civil law transactions,<sup>82</sup> the sale of land constituting a farm is also tax-free if the buyer of land that includes a farm creates or expands a farm with an area between 11 and 300 hectares and manages it for at least five years from the date of purchase.<sup>83</sup>

## 5. Hungary

The Hungarian land transfer regulations<sup>84</sup> that came into force in 2014 differ from the rules of other EU countries, such as France and Austria, and from non-EU countries that have established EU-compliant rules, such as Switzerland.

From the time of their adoption, Hungarian regulations showed similarities to the comprehensively regulated restrictive system; at that time, there were no significant special rules<sup>85</sup> regarding the intestate succession of agricultural lands and holdings. However, there were some about the testamentary dispositions. The situation changed significantly owing to the amendment of Act LXXI of 2020 on the termination of undivided co-ownership of land<sup>86</sup> (hereinafter referred to as the Co-ownership Land Act), which came into effect on January 1, 2023.<sup>87</sup> This can be considered a definite step towards developing special state succession rules for agricultural properties.

In the Co-ownership Land Act, a separate rule is established for cases in which the object of succession is immovable property<sup>88</sup> or the ownership interests (shares) of immovable property.<sup>89</sup>

The provisions of the Act regarding immovable property<sup>90</sup> state that if the deceased owns a property solely inherited jointly by multiple heirs under intestate succession, they must take measures to avoid creating undivided co-ownership. The amendment, taking into account the specificities of inheritance and probate proceedings, establishes different rules when heirs and non-co-owners divide immovable property to prevent the formation of undivided co-ownership.

Regarding the second issue, the co-heirs have some options during the probate procedure to avoid further division of the ownership share. These measures included reaching an allocation agreement, selling shares, and donating shares to the state.

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<sup>81</sup> Ustawa z dnia 15 listopada 1984 r. o podatku rolnym

<sup>82</sup> Ustawa z dnia 9 września 2000 r. o podatku od czynności cywilnoprawnych

<sup>83</sup> Kubaj 2020, 124–125.

<sup>84</sup> See for example, Hornyák 2019a; Hornyák 2019b; Hornyák 2020; Hornyák 2021; Csák 2006; Csák 2010; Csák, Kocsis & Raisz 2015; Olajos 2022; Olajos 2018.

<sup>85</sup> The general rules of the Hungarian Civil Code should be applied to the issues in question. See for example, Barzó 2016; Vékás 2008; Vékás 2019.

<sup>86</sup> 2020. évi LXXI. törvény a földeken fennálló osztatlan közös tulajdon felszámolásáról és a földnek minősülő ingatlanok jogosultjai adatainak ingatlan-nyilvántartási rendezéséről.

<sup>87</sup> See further: Hornyák & Prugberger 2016, 58.

<sup>88</sup> Co-ownership Land Act, Section 18/A.

<sup>89</sup> Co-ownership Land Act, Section 18/B.

<sup>90</sup> Co-ownership Land Act, Section 18/A (1)–(4).

If none of these happens, then, although the heirs<sup>91</sup> inherit the share in the immovable property in accordance with the rules of intestate succession,<sup>92</sup> they must sell it within five years,<sup>93</sup> transfer it to one of them, offer it free of charge to the State, or terminate the undivided joint ownership of the property by initiating proceedings. If they fail to do so, there will be a forced sale of the ownership shares involved in the inheritance.

With regard to testamentary disposition, given that the acquisition of land by means of a testamentary disposition has already been dealt with in several studies,<sup>94</sup> we do not intend to analyze it in detail in this paper but only to outline what we consider most relevant.

Act CXXII of 2013 on the Transfer of Agricultural and Forest Land (hereinafter referred to as the Land Transfer Act)<sup>95</sup> imposes restrictions on the creation of usufruct rights for agricultural land, which is provided in Act V of 2013 on the Civil Code (hereinafter referred to as the Hungarian Civil Code), by invalidating such rights established through contracts or testamentary dispositions, unless they are created for the benefit of a close relative. However, if a usufruct is established between close relatives, the Land Transfer Act's provisions on property acquisition apply with certain exceptions: the usufruct may be set for a maximum period of 20 years; the validity of the contract or testamentary disposition establishing the usufruct does not require the approval of the agricultural administration body; the provisions on land acquisition limit and land possession limit shall be applied to the extent of the permitted acquisition of the usufruct, with the notion that the right of ownership shall be understood as the usufruct and when setting the permitted extent, the area of land owned by the recipient shall be considered; the ownership of the land may be transferred by retention of the usufruct only to a close relative.<sup>96</sup>

It is common for testators to designate a non-farmer as their heir, but it should be emphasized that the legislator has established strong restrictions regarding the size of the acquired land for such individuals. As a general rule, a not agricultural national producer (*földművesnek nem minősülő belföldi személy*) and citizens of EU Member States may acquire ownership of agricultural land only if the total area of the land they already possess does not exceed 1 hectare when combined with the area of the land they intend to acquire.<sup>97</sup> An exception to this rule applies when a person transferring ownership is a close relative of a non-agricultural producer or citizen of an EU Member State.<sup>98</sup> In the case of farmers, when a non-agricultural producer or citizen of an EU Member State is a close relative of the person transferring ownership, or in the case of land acquisition for recreational

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<sup>91</sup> See Act Co-ownership Land Act, Section 18/A (3).

<sup>92</sup> Ibid.

<sup>93</sup> Ibid.

<sup>94</sup> See, for example, Hornyák 2019a; Hornyák 2021, 86–99.; Kurucz 2018, 5–23.; Paic-Karsai 2022, 98–119.

<sup>95</sup> A mező- és erdőgazdasági földek forgalmáról szóló 2013. évi CXXII. törvény.

<sup>96</sup> Land Transfer Act, Section 37(5). See also: Szilágyi 2022, 159.

<sup>97</sup> Land Transfer Act, Section 10(2).

<sup>98</sup> Land Transfer Act, Section 10(3).

purposes, the general land acquisition limit<sup>99</sup> applicable to agricultural producers must be considered. This means that they can acquire ownership of agricultural land up to a total area of 300 hectares (including ownership and usufruct) when considering the area of land already in their possession and under their usufruct.<sup>100</sup> Of course, these restrictions, including the 1-hectare limit or, in certain cases, the 300-hectare land acquisition limit, must also be considered in the case of testamentary disposition.

It should be also pointed out that in the case of the acquisition of ownership of agricultural land through testamentary disposition, the approval of the agricultural administrative authority is required.<sup>101</sup>

Moreover, certain special rules shall also be applied in the proceedings.<sup>102</sup>

It is worth mentioning that the rules of acquisition of ownership incorporated in the Land Transfer Act do not cover all legal bases and methods of acquisition in question, as they do not apply to intestate succession; donations to the state in the probate proceedings; of expropriation and acquisition by auction for restitution.<sup>103</sup> The acquisition of ownership by intestate succession also occurs when the testamentary inheritor can become an intestate inheritor (assuming the lack of a testament and the exclusion of other intestate inheritors from inheritance). Therefore, in these cases, instead of special rules for the land transfer regime, the general rules set out in the Hungarian Civil Code should be applied.<sup>104</sup>

According to the inheritance tax, in the case of direct relatives, surviving spouses, and siblings, there is no inheritance tax (*öröklési illeték*) to be paid, which also applies to the inheritance of agricultural land. From January 1, 2023, when a landowner passes away, four options are available to legal heirs to keep the land together, as highlighted earlier. These rules apply only to intestate succession and not in the case of testamentary disposition. However, if the heirs do not complete one of the alternatives within one year from the beginning of the probate proceedings, they lose their exemption from the inheritance tax. Therefore, as a general rule, a 9% inheritance tax must be paid for the land value.<sup>105</sup>

## 6. The Relevant Case-Law of the National Constitutional Courts

During our research, we aimed to explore the case law of the national constitutional courts of the countries examined. Only in Hungary is a relevant decision

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<sup>99</sup> An exceptional land acquisition limit for the exchange of land acquired by intestate succession is established by the Hungarian legislator without the time limit of May 1, 2014. It is worth mentioning that land acquired through this way may exceed the 300 hectares and 1 hectare limit, respectively. See: Land Transfer Act, Section 17(2).

<sup>100</sup> Land Transfer Act, Section 16(1) and Section (10)3 and 3a.

<sup>101</sup> Land Transfer Act, Section 7(1). On detailed rules, see: Hornyák 2019a, 190 and Paic-Karsai 2022, 115.

<sup>102</sup> Hornyák 2019a, 91.

<sup>103</sup> Land Transfer Act, Section 6(2).

<sup>104</sup> Szilágyi 2022, 160.

<sup>105</sup> See the MAGOSZ's (Magyar Gazdakörök és Gazdaszövetkezetek Szövetsége) technical summary.

delivered by the constitutional court that explicitly deals with the inheritance of agricultural lands.

Regarding Hungarian case law,<sup>106</sup> the Constitutional Court of Hungary, decision no. 24/2017 (X. 10), delivered on October 3, 2017,<sup>107</sup> examined the right to property<sup>108</sup> and the protection of natural resources<sup>109</sup> with regard to the inheritance of land through testamentary disposition. The petitioner challenged the constitutionality of the definition of agricultural producer, the 1-hectare land acquisition limit for non-producers,<sup>110</sup> and the acquisition of land through testamentary disposition.<sup>111</sup> The petitioner inherited three arable land plots through testamentary disposition and the notary handled the case by applying for an official certificate from the competent government office. However, the request was rejected, as the petitioner already possessed more than one hectare of land and did not qualify as an agricultural producer. Consequently, acquiring more land would violate the property acquisition restriction and the conditions stipulated in the disputed law provision for property acquisition would not be met.<sup>112</sup>

As a result, the notary proceeded to transfer agricultural immovable property to the Hungarian state following the rules of intestate succession. The petitioner believed that this decision breached the rule of law, unduly limited fundamental rights, and violated the right to property and the principle of equality.<sup>113</sup>

The ruling of the Constitutional Court not only declared the legislator's omission unconstitutional but also stated that the testamentary disposition in question, for which the authority refused approval, is still valid. However, the Court acknowledged that the testamentary heir faces an uncompensated financial disadvantage if official permission is denied, which goes against the principle of proportionality enshrined in the Fundamental Law.

To correct the omission mentioned above, the Constitutional Court ordered the state to provide pecuniary compensation to the testamentary heir, who is a necessary heir. The court found that the lack of compensation amounted to a violation of fundamental rights and called on parliament to establish a compensatory rule by December 31, 2017.<sup>114</sup> Additionally, the court nullified the last sentence of the Land Transfer Act in section 34(3).<sup>115</sup>

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<sup>106</sup> On this topic see: Olajos, Csák & Hornyák, 2018, 5–19. See also Csák 2018, pp. 19–32.

<sup>107</sup> 24/2017. (X. 10.) AB határozat a mező- és erdőgazdasági földek forgalmáról szóló 2013. évi CXXII. törvény 34. § (3) bekezdésével kapcsolatos mulasztásban megnyilvánuló alaptörvény-ellenesség megállapításáról, valamint a mező- és erdőgazdasági földek forgalmáról szóló 2013. évi CXXII. törvény 34. § (3) bekezdése utolsó mondata alaptörvény-ellenességének megállapításáról és megsemmisítéséről.

<sup>108</sup> Fundamental Law of Hungary, Article XIII.

<sup>109</sup> Fundamental Law of Hungary, Article P).

<sup>110</sup> Land Transfer Act, Section 10(2).

<sup>111</sup> Ibid. Sections 5(7), 10(2), 34(1) and (3) of the Land Transfer Act.

<sup>112</sup> Szilágyi 2022, 184.

<sup>113</sup> Ibid.

<sup>114</sup> Constitutional Court of Hungary, Decision No. 24/2017, para. 44.

<sup>115</sup> Ibid. para. 45.

## 7. Conclusions

This study uses the legal comparative method to review and analyze agricultural land succession rules in four Central European countries: Slovakia, the Czech Republic, Poland, and Hungary (i.e., the Visegrád countries).

The results show that in Slovakia and the Czech Republic, there are currently no specific regulations governing the inheritance of agricultural land, and the general succession rules of the Civil Code shall be applied. However, in Slovakia, although there are no special rules for the inheritance of agricultural land, it is necessary to consider provisions prohibiting the fragmentation of agricultural and forestry land in probate proceedings. Analyzing the legal regime for the inheritance of agricultural land has revealed the weak intervention of the State in connection with these issues. The Slovak government plans to address this issue in the future; however, the basic concept still needs to be outlined. In my opinion, the Slovak state should embark on comprehensive land reform and adopt specific rules for the inheritance of agricultural land. However, this would require an amendment to the Civil Code. Undoubtedly, Act No. 180/1995 Coll. on Certain Arrangements for the Holding Land, as amended, and still in force, contains criteria to prevent the fragmentation of agricultural (and forestry) land.

Regarding Poland, basically, there are no specific provisions that differentiate the inheritance of agricultural property or farms from other types of property. However, some particular rules can be found in Article 4 of the Act of April 11, 2003, on the Shaping of the Agricultural System.

By contrast, Hungarian legislator introduced special rules for acquiring ownership of agricultural land through intestate succession and testamentary disposition. Thus, the legislator moved toward a special regime for the intestate succession of agricultural land.

Slovakia and the Czech Republic do not impose inheritance taxes. Simultaneously, the acquisition of agricultural land in Poland is typically subject to an inheritance tax. Nevertheless, exemptions are available for natural persons who create or enlarge a farm within a specific size range and manage it for at least five years. Revenue from agricultural activities is also exempt from personal income tax, and young farmers can benefit from agricultural tax exemptions for land intended to create or extend farms by up to 100 hectares. The sale of land constituting a farm is tax-free if the buyer creates or expands the farm within a certain size range and manages it for at least five years. In Hungary, inheritance tax exemptions, including agricultural land, apply to direct relatives, surviving spouses, and siblings. Since 2023, legal heirs have four options for keeping land together, but they only apply in the case of intestate succession. Failure to complete one within a year results in a loss of inheritance tax exemption, leading to a 9% tax on land value.

Regarding the constitutional court's case law, only in the case of Hungary can a relevant decision be found that deals explicitly with the inheritance of agricultural lands.

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