

The Restitution of Agricultural Land During the Political Regime Change and its Effects on Hungarian Property Relations Today³

Abstract

In Hungary after World War II, the system of large estates was abolished and private peasant ownership was established. The peasant strata's desire for land was therefore satisfied within the framework of a micro- and smallholder structure. During the period of collectivisation, the possibility of using peasant land practically disappeared, and the collective use of peasant private property took place within the framework of the producer cooperative system. From the 1960s until the period of the regime change, the cooperative model became dominant in terms of agricultural production. The political regime change of 1989/90 and the associated economic transformation also meant that the system of large-scale cooperative land use was dismantled and lands under cooperative ownership and partly state ownership were privatised. Part of this process was the provision of compensation, which primarily meant state reparation for unjust property deprivations (including land ownership) in the period between 1939 and 1967. This also had negative aspects in terms of the concept of reparations, which did not strengthen the market economy character of agricultural activity and agricultural holdings.

Keywords: compensation, restitution of agricultural lands, privatization, reprivatisation, estate structure, arable land

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1. Historical Background – Antecedents of Collectivisation

World War II completely destroyed agricultural production in Hungary and there was a constant need by the rural population to transform the land ownership structure in the hope of access to land. In Hungary, land reform was included in the program of the Hungarian National Independence Front (MNFF), the anti-fascist united front formed on 2 December 1944, along with a number of issues shaping the further fate of the nation.⁴ The communist concept of land reform was publicised by the National Peasant Party, which enjoyed the sympathy of the poor peasantry as well as the landless. Two concepts were formulated, one focusing on economic efficiency (Smallholder Party) and the other on social justice (Communist Party and National Peasant Party).⁵ The victory of the latter aspect was strengthened by military considerations, as the rapid land distribution contributed to the disintegration of the Hungarian army, which was still fighting in the western half of the country, and so also reduced the losses of the Red Army.

The Hungarian feudal system of large estates was abolished after World War II, within the framework of the land reform of 1945.⁶ The land reform affected 34.5% (3.2 million hectares) of Hungarian agricultural land together with the corresponding fixed and working assets, and had three objectives: firstly, the abolition of the feudal system of large estates, secondly, the establishment of peasant private property, and thirdly, the establishment of a middle-sized estate structure. The first two goals of the triple system were achieved, but the third goal was not, as the estate structure was characterised by a small and micro-ownership structure. The reason for this can be found in the correlation between the large number of people receiving land beneficiaries and the amount of available land. The land reform was completed in 1947 and 98.5% of the land holdings were less than 30 hectares in size.⁷ Land was distributed during the land reform, but the beneficiaries received the land from the state land fund in exchange for a so-called redemption price. As a result, the bipolar production structure clearly became small-scale, which was fundamentally different from the middle-sized estate property relations of Western countries with developed agriculture. The vertical system of agricultural production and food industry, which was based on a large-scale structure, declined, and the fate of the stock of industrial means of production supporting agricultural production became doubtful, the operation of which was revived within the framework of farmers' cooperatives, and then the

4 | Balogh and Izsák 2004, 9-13.

5 | Donáth 1962, 282-287.

6 | For more about this period, see: Szilágyi 2009, 15-30; Bobvos 1994, 1-20; Bobvos 1988, 636-646; Koronczay 1979, 1010-1020; Kozma 2011; Markója 1987, 289-295; Seres 1965, 984-997; Tanka 1981, 140-152; Tanka 1990, 239-245.

7 | Szakács 1998, 330-343.

system of machine stations was also organised in order to supply small farms with means of production. These represented a central and centralised organisational framework for production. The machine stations operating until the end of the 1950s can be regarded as state-owned machinery built on the Soviet model, whose task was to support the agricultural work (ploughing, harvesting) of small estates by mechanical means for a certain compensation. Together with the land reform, the organisation of state-run estates and state farms also began.

2. The Development of the State and Cooperative Land Use System

At the beginning of the period of state organisation based on communist dictatorship (1948/49), private peasant ownership was dominant in agriculture, while nationalisations began in industry in other sectors of the economy. The different sectoral ownership structure (agricultural private ownership – industrial state ownership) carried antagonistic contradictions, which had to be resolved in view of the socialist system and communist ideology. The solution was realised in violation of the peasant private ownership. Initially, this was done by restricting the right of disposal of peasant private ownership, subject to the approval of transactions by the authorities, and then by collectivisation, which meant the transition to the socialist large-scale agricultural model. With collectivisation, the possibility of the individual use of private land ownership disappeared, and was replaced by a system of collective use established within the framework of state farms and cooperatives, creating a common land use system. The establishment of the common land use of cooperatives was basically served by the institution of imposing obligations on land intake and property intake (livestock and means of production). The peasant private owners were obliged to become members of the cooperative, and even forced to do so, if necessary. Membership created an obligation to transfer land, i.e. the member had to transfer the use of the land to the cooperative, while retaining his/her ownership. The land owned by the peasants was farmed by cooperatives according to the imagined system of large-scale cultivation. However, the measures did not only mean the transfer of land use to cooperatives, but also pointed in the direction of transferring as much ownership as possible to the cooperative in addition to its use. This aspiration can be observed both in the period of collectivisation, and also in the 1960s – for example, the objective of Act IV of 1967⁸ was that the land should preferably be owned by the person using it. Given that the cooperative was the main custodian of use, an extension of cooperative ownership can be observed under various titles. An example is the legal provision according to which if the member died, his/her heir had to decide whether or

8 | For more information and its history, see: Réti 2012, 3-49; Olajos 1998, 137-153; for the current regulation, see: Bak 2018.

not to join to the cooperative, because if they did, they could retain ownership of the land by continuing the use of the cooperative, but if they did not join to the cooperative as a member, the cooperative acquired ownership of the land by way of so-called redemption at a price significantly lower than the market price. Prior to the change of regime, the majority of agricultural land and other assets were owned by the state or cooperatives based on legal provisions. However, political will was increasingly also aimed at the abolition of peasant private ownership. Legislation enacted during the period of socialism increased the proportion of cooperative land ownership under various titles and conditions. By the end of the 1960s, the process of collectivisation had been completed and stabilised, and the system of cooperative/collective large-scale cultivation was established, which existed until the regime change.

Until the end of collectivisation, in addition to small-scale peasant farms, there were three state-owned types of organisations: state farms, machines, stations; forest farms; and agricultural producer cooperatives, which were continually strengthened. The dominance of agricultural producer cooperatives can be observed and became decisive in the agricultural sector. The producer cooperative system can also be defined as decisive within the cooperative system. Agricultural producer cooperatives were called existential cooperatives, given that the members derived their existence from the cooperative, the members of the cooperative had an obligation to work, and the cooperative had an employment obligation towards the members.

The cooperatives operating in 1962 had an average area of around 1,000 hectares. Within 10 years, the average area grew to almost 2,000 hectares and then to almost 4,000 hectares by 1983, at which time there were 1,300-1,400 cooperatives. Of the approximately 500 state farms, 217 remained by 1962, and by the early 1970s there were 120-130. The initial average area of 2,000 hectares grew to 5,000 hectares and then to more than 7,000 hectares.

3. Change of Organisational and Estate Structure

After the regime change in Hungary in 1989, the ownership and use of agricultural land changed fundamentally.⁹ The Act on Business Associations¹⁰ imposed the obligation on state farms and forest holdings to transform by the end of 1989. They continued to operate as limited liability companies or joint-stock companies, while state ownership was retained in some state farms, and in forest holdings. In addition to the sale of company shares, state-owned land was also sold and privatised.¹¹

9 | Csák 2007, 3-18; Kurucz 2007, 17-47; Tanka 2007, 42-49; Tanka 2006, 23-28.

10 | Act VI of 1988 on Business Associations

11 | See: Olajos 1999, 105-129.

The property relations of forests also changed significantly after the regime change. About 40% of the forests (nearly 700,000 hectares) became the private property of hundreds of thousands of forest owners. The current property structure of forests is as follows:

- | State-owned 58%,
- | Community-owned 1%,
- | Private 41%.

The privatisation of forests caused significant degradation in the first years after the transformation. Later, through associations of forest holders and cooperatives, co-management also developed for a proportion of the private forests. Management relations are still unsettled in a decreasing number of other forests – mostly due to the many undivided common properties – therefore professional forest management has not started there. The approximately 795,000 hectares of private forest were extremely fragmented in terms of ownership.

However, forest management obviously requires expertise and community regulation. In Hungary, an act was passed relatively quickly, in 1994, which proposed the establishment of associations of forest holders as institutions of regulated private property for new forest owners. Today, a significant proportion of private forests are also co-managed.

In the case of cooperatives, the transitional acts on cooperatives envisaged a complete transformation of assets by the end of 1992. This involved creating a cooperative form based on private property. Some of the cooperatives changed their company form into limited liability companies and joint-stock companies, despite the fact that, according to the Act on Business Associations, the transformation of cooperatives was intended to be restricted by policy.

The transformation of cooperatives was intended to promote privatisation. A number of laws were passed that settled the transitional regulations, aimed at restoring private ownership from cooperative and partly state ownership. In contrast to business organisations, which can be defined as capital pooling organisations, cooperatives functioned and still operate as individual pooling legal persons. The transformation of cooperative assets can be examined in two dimensions. Firstly, the land owned by the cooperatives became private property during the compensation procedure. This affected an area of about two million hectares. Secondly, the issue of member-owned land (share ownership) in the common use of cooperatives also began to be addressed with the aim of abolishing undivided common ownership in favour of independent real estate. In addition, there was a transfer of land worth 30 gold crowns (AK) to members and 20 gold crowns (AK) to employees from cooperative ownership.

Other assets of cooperatives became the property of members through the 'procedure for the declaration of assets', during which the non-land property became the property of the members in the form of business shares or cooperative

shares. The business share expressed the owner's share of the assets of the cooperative, and the cooperative share represented membership. Accordingly, the member acquired the cooperative assets in the form of two asset connections. The business share of the cooperative was a marketable document which could be sold with the pre-emption right of the cooperative and the member. This led to the development of there being persons who had business shares and cooperative shares, the 'share owners', and persons who only owned business shares, the 'third-party share owners'. This solution was abolished during the amendment of the cooperative acts in 2000 and 2006, and the legal solution pointed towards the creation of a form of asset connection, the cooperative share as a contribution of assets. It is still worth clarifying the relationship between the cooperative and the member. Before the regime change, the member participated in the activities of the cooperative, and the member's activity can be interpreted as subordinate to the cooperative. After the regime change, however, this relationship changed, and with the establishment of member farming and family farms, the role of the cooperative changed so that the cooperative became an integrator organisation, promoting and supporting the realisation of members' interests. The main objective was to develop a viable family economic model within the framework of both ownership and use. This process also meant the transformation of the agricultural holding structure, as a result of which the role of cooperatives (from the previous production holding model) also changed and today they are mainly organisations helping and integrating private farms.

4. Reasons for and Realisation of Restitution

In a speech delivered in Parliament, József Antall, the candidate for prime minister of the MDF (Hungarian Democratic Forum) who would go on to win the elections held following the regime change, announced a new agricultural policy abolishing agrarian monopolies, with the goal of introducing a market economy model for private owners based on the unity of ownership and use.¹²

12 | Prime Minister candidate József Antall's program speech in Parliament in 1990. "The government announces a new agricultural policy. A market economy is inconceivable without a genuine private owner, which in agriculture largely means ownership by natural persons, and in most cases ownership and use coincide. The new agriculture is fundamentally based on family cooperation of private owner producers, as well as on real cooperatives of owners, and on specific, more narrowly state farms.

The basic principle of agricultural land reform is that land should become the property of those who are expected to cultivate it. Our aim is to bring justice to the peasantry for the injuries they have suffered. In this respect, 1947 can be a decisive starting point, when ownership relations following the land reform of 1945 were established and forced collectivisation had not yet begun.

But this must not jeopardise production or the modern design of the country's ownership system, nor must it jeopardize our entire agricultural policy. Therefore, the government's agricultural programme must not be a single party, but a unified programme of the parties of the coalition.

At the time of the regime change, the social need to correct past grievances and mitigate the consequences of grievances naturally arose.¹³ In Hungary, Decision No. 37/1990 of the Hungarian Parliament¹⁴ was the first to formulate compensation as a current legal task. The compensation was related to personal injury and damage to property, and was to be resolved in the form of money, compensation tickets, annuities or other additional benefits. Compensation for pecuniary damage was mainly in the form of compensation tickets. Pecuniary damage included grievances related to the taking of agricultural land, but also the taking of businesses.

It is useful to clarify the position Hungary took on the issues of reprivatization, compensation, and privatization, as during the development of the concept of reparations, there were political views that advocated reprivatization of agricultural land. The reprivatization argument – referring to the position of the Constitutional Court – stood on the legal basis that the ownership rights of the former private owner continue to exist and the resulting claims are indefeasible. By contrast, the ‘ownership damages’ that compensation was intended to remedy presupposed the loss of ownership. The compensation mainly concerned cases where ownership had been acquired by the State (or by the producer cooperative). The compensation, therefore, did not satisfy the ownership claims of former owners. In terms of claims for damages and indemnification due to expropriation of ownership,

The fate of the remaining state lands depends on the decision of parliament, until then the sale of land owned and used by large farms, including distribution to members, must be frozen. The use of agricultural land is determined by the will of the owners, who decide whether to cultivate, rent or sell individually or jointly.

The acquisition of land by foreigners in Hungary must be made public and transparent, and can only be restricted for a temporary period. The government’s measures prevent large holdings from consuming their wealth.

The government initiates the creation of the Land Act, the basic principle of which is that free land ownership cannot be obtained. The stability of agricultural production requires that cooperatives operating according to the needs of membership be strengthened.”

On 25 September 1990, the coalition government of the regime change published the three-year, and several times amended, Programme of National Renewal, which also included economic policy ideas. In the field of agricultural policy, the programme initially formulated reprivatization efforts in accordance with the ideas of the Smallholders Party (Independent Smallholders Party), but after political bargaining partial indemnification was implemented.

13 | See more about it: Schlett and Cseszka 2009, 92-120; Kovács 2011, 239-260; Madácsy 2016, 240-253; Schlett 2023, 35-53; Péntek and Ritter 2023, 313-354; Bíró and Makó 2005, 61-125; Berényi et al. 1998; Mihályi 1998;

Mucsi 1998, 211-215; Kovács 1994, 77-87; Vass 1992, 125-138.; Sáriné and Mikó 1991.

14 | Decision of the Hungarian Parliament 37/1990 (III.28) on the Compensation of Persons Unlawfully Restricted in Personal Liberty between 1945 and 1963

Based on the provisions of § 55 of the Constitution, – according to which in the Republic of Hungary everyone has the right to freedom and personal security; and any individual subject to illegal arrest or detention is entitled to compensation – the Parliament declares its intention that all those who suffered persecution under the Stalinist dictatorial power in connection with the Second World War or after it, receive compensation. The purpose of compensation is to remedy as far as possible the injuries caused by injustices against one’s life and personal freedom, in accordance with society’s sense of justice.

compensation was not based on the original legal grounds either. In legal relations affected by the Compensation Act, reference to the old legal bases was excluded, and by renewing the obligations incumbent on the legislature, the Compensation Act served as a common and original legal basis for claims for compensation based on legal obligations and those granted by act without a previous obligation.¹⁵ In the case of pecuniary damages, due to the unconstitutionality of the ideas of reprivatization of agricultural land, the deprivation of assets was settled within the framework of the same compensation procedure. This was because the state did not satisfy legal claims, but allocated goods to beneficiaries on the basis of equity. While reprivatization involved the return of state property to the former owner, privatization involved the private transfer of state property. The Hungarian solution to reparation was compensation, meaning remedying the damage unjustly caused by the state to citizens' ownership in order to settle ownership relations and create security of transfer conditions and the businesses necessary in a market economy, guided by the principle of the rule of law, and taking into account both society's sense of justice and its carrying capacity. Compensation therefore focused on the issue of justice and not legality. The removal was carried out on the basis of previously applied legislation, which could be considered lawful at the time of the removal, but based on today's perception, these violations were unjust. The question of legality determined the exclusion of the claim for damages. Indemnification was not applied due to the judicial and legal relationship and partial reparation. It was, therefore, compensation which acted as a special legal institution to settle the injuries suffered. It was a partial restitution of damages unjustly caused by the State to the ownership of citizens.

The act provided for compensation for damages to citizens' ownership unjustly caused by the State after 8 June 1948. This was followed by Act XXIV of 1992 on the Damages Caused Between 1 May 1939 and 8 June 1948, based on the same principles, and Act XXXII of 1992 on Compensation for Those Unjustly Deprived of Life or Liberty for Political Reasons.

The restitution of pecuniary damages was carried out on the basis of Act XXV of 1991¹⁶ and Act XXIV of 1992.¹⁷ The essence of the legal provisions was that the compensation received for various reasons was determined at a flat rate based on the extent of the damage – for this, different tables were prepared according to ownership categories – and the value of the land was determined on a gold crown (AK) basis, at a rate of 1,000 HUF/AK. The amount of compensation was depressive, with 100% compensation only for damages of up to 200,000 HUF.

15 | See: Decision of the Constitutional Court 15/1993 (III. 12)

16 | Act XXV of 1991 on partial compensation for damages unjustly caused by the State to the ownership of citizens in order to settle ownership relations

17 | Act XXIV of 1992 on partial compensation for damage unjustly caused by the State to the ownership of citizens in order to settle ownership relations, applying legislation enacted between 1 May 1939 and 8 June 1949

The amount of compensation was limited to 5 million HUF per object of ownership and per person. Entitlement to compensation was limited to the following categories: a) a Hungarian citizen, b) a Hungarian citizen at the time of the injury, c) a person who has suffered harm in connection with Hungarian citizenship, d) a non-Hungarian citizen who habitually lived in Hungary on 31 December 1990. As a *sui generis* rule of succession, the compensated person or, in the event of his/her death, his/her descendants or, in the absence of these, his/her spouse, could apply for compensation, whether he/she lived in Hungary or abroad. The compensation process was such that the former (private) owners were either very old or no longer alive and their descendants were generally not engaged in agriculture. Therefore, agricultural land fell into the hands of a group of private owners who could not or did not want to work in agriculture. In Hungary, there was no legal requirement for a person wishing to acquire ownership or use of agricultural land to be linked to agriculture.

The compensation took the form of a compensation ticket¹⁸, which was a bearer, transferable security equivalent to the amount of the compensation, embodying the nominal value of the claim against the State, which could be purchased a) from state assets to be sold during privatisation, b) from designated land funds of producer cooperatives and state farms, or c) from municipal rental housing designated for disposal; or could be, d) converted into life annuity, e) sold, or f) traded on a stock exchange. The compensation ticket used for the privatisation of state assets was classed as a resource at the nominal value of the compensation ticket during privatisation. This study focuses on the purchase of cooperative and state lands using compensation tickets.

When analysing the process of buying land under the compensation procedure, it is necessary to clarify the question of the available land fund. In the common land use system resulting from collectivisation, there was cooperative farmed land owned by its members, land owned by the cooperative (which was extended due to unjustly caused grievances), and state-owned land. The legislation enacted in 1992¹⁹ created the possibility of establishing a compensation land fund, which cooperatives had to designate according to previously announced claims, and state farms had to do the same. The gold crown (AK) value of land funds designated by state farms had to be at least 20% of the land offered by producer cooperatives on a national average. The designated land fund could be bid on at auction by the holders of compensation tickets. Members, former local landowners and residents of the municipality could bid on producer cooperative lands, and all compensated persons could buy state lands. There was a great demand for the acquisition of land by auction as part of compensation.

18 | For more information, see: Radnai 1995, 279-300.

19 | Act I of 1992 on Cooperatives and Act II of 1992 on the entry into force and transitional rules of Act I of 1992 on Cooperatives

The compensation cannot be considered as land reform, because its primary purpose was not to change the property relations, but to make equitable reparations by the state to remedy the wrongs committed in the past. Of course, the compensation had political reasons, connected to the change of political regime, and also had an impact on property relations. It is a fact that the cooperative common use system was not sustainable and the transition to a market economy presupposed the advancement of privatisation efforts.

5. The Effects of the Transformation of Land Ownership and Conditions of Use until Today

The structure of land ownership and use that emerged after the regime change was enshrined by the Arable Land Act, which has been amended several times (Act LV of 1994 on Arable Land; hereinafter referred to as: ALA). An essential element of the amendments relates to Hungary's accession to the EU in 2004. The acquisition of ownership by foreigners is always a central issue in the acquisition of agricultural land. As a general rule, foreigners (individuals, legal entities) may not acquire ownership of agricultural land. In this context, it is worth briefly referring to the European Agreement signed in 1991 and promulgated in Hungary by Act I of 1994, which settled a number of issues between the applicant Hungary and the European Community. The issue of land ownership is settled in relation to the establishment of community companies and citizens (Article 44). The question arose in relation to freedom of establishment as to the date from which the principle of 'national treatment' should be guaranteed to community companies and citizens in the applicant country. The ownership, sale, and long-term lease of real estate, land and natural resources were included in a so-called 'perpetual exception list', according to which Hungary did not have to introduce national treatment of EU companies and citizens in respect of agricultural land until it became a full member of the European Union.²⁰

Hungary was granted a land moratorium for 7 + 3 years (due to serious disruption in the market for land) on the basis of point 3 of Annex X to the Accession Treaty (2003), which meant that it could maintain the divergent rules on land acquisition for citizens of Member States existing at the time of accession. Citizens of Member States could acquire land ownership in Hungary if they had lived in Hungary for at least 3 years and engaged in agricultural activities and wished to continue agricultural activities in the future. The reason for maintaining the land moratorium was that the system of agricultural subsidies and land settlement had not yet been established, and land prices were very low in Hungary. At the end of the 7 years, the Hungarian government initiated the maintenance of the land

20 | Szilágyi 2010, 49-50; Compare: Prugberger 1998, 276-277.

moratorium for another 3 years,²¹ which was granted to Hungary by the European Commission.²² Accordingly, the same regulation was introduced for domestic persons and Member State citizens with effect from 2014.²³ The legislation is still in force, although it has been amended several times, and is quite complex and wide-ranging, affecting as much as 80% of Hungary's land.^{24 25}

Compensation and privatisation strengthened private ownership, but this process also had negative consequences, some of which continue to this day. The transformation of the former socialist large holdings (e.g. through compensation) was carried out by separating land assets from other assets, which made production impossible, and which could only be restored through appropriate agricultural credit and support schemes. The food chain between producer and consumer has lengthened considerably, for several reasons: (1) procurement prices are low and traders make disproportionately high profits; (2) the country basically became focused on production of raw materials, as food processing capacity was privatised, often to foreign competitors who, considering the opportunity as market acquisition, sometimes later closed down holdings acquired on favourable terms (e.g. the sugar sector); and (3) more than half of the landowners do not manage the land and use it by leasing.

After the regime change, the estate structure of Hungarian agriculture has become dual: a small number of large holdings with large areas, and many small farms (averaging 2.2 hectares) balancing on the threshold of viability and based on the direct work of family members. The lack of viable middle-sized estates has been a problem in Hungary since the land reform of 1945.

Since the regime change, land consolidation has not been implemented in Hungary, and processes have not been completed. There is a problem with the development of undivided common ownership, which arises from: (1) the designation of compensation land funds and the common ownership character of the

21 | Decision of the Parliament 2/2010 (II.18)

22 | Decision 2010/792/EU of the European Committee

23 | Act CXXII of 2013 on the Transfer of Agricultural and Forest Land, which is a cardinal two-thirds act according to the Fundamental Law. Fundamental Law Article P) Section (2) "The regulations relating to the acquisition of ownership of arable land and forests, including the limits and conditions of their use for achieving the objectives set out under Paragraph (1), and the rules concerning the organisation of integrated agricultural production and on family farms and other agricultural holdings shall be laid down in an implementing act."

24 | Act CCXII of 2013 on Certain Provisions and Transition Rules Related to the Act CXXII of 2013 on the Transfer of Agricultural and Forest Land (Implementation Land Act), Act VII of 2014 on the Detection and Prevention of Legal Transactions Aimed at Circumventing Legal Provisions Restricting the Acquisition of Ownership or Use of Agricultural Land, Act CXXIII of 2020 on Family Farms, Act LXXI of 2020 on the Liquidation of Undivided Common Ownership of Land, Act CXLIII of 2021 on the Transfer of Agricultural Holdings. Act XXXVIII of 2010 on the National Land Fund, Act LIII of 1996 on the Protection of Nature, and Act XXXVII of 2009 on Forests, Forest Protection and Forest Management.

25 | The area under cultivation is 7.5 million hectares, of which 5.5 million hectares is agricultural land (the remaining area is forested). Of the types of cultivation, cropland covers 4.5 million hectares, which represents 81% of the agricultural area.

acquired land; (2) from the non-allocation of share property (the land on which the member's ownership existed was in common use by a cooperative); and (3) from the possibility of succession of several heirs in the event of the death of the owner. In the first two cases, the Hungarian state tried to abolish common ownership by setting up and operating land settlement and land allocation committees, consisting of lay persons. Land settlement committees assessed, reconciled, and aggregated compensation auction claims and made recommendations for scheduling auctions and designating land to be auctioned. While the activities of land settlement committees can be linked to the compensation procedure, land allocation committees dealt with matters relating to agricultural land registered as share land property.²⁶ The agricultural land allocated to the compensation land fund became private property under the title of auction purchase, while the share-ownership land fund became independent private property under the title of land allocation. If the share landowners do not request the development of independent properties, the parcel of land becomes the common ownership of the share landowners who submitted the eligible application or of the owners determined by arrangement or lot. Attempts to abolish undivided common ownership have been fruitless since the 1990s, so new solutions have been proposed as explained below.

The creation of common ownership generated by the legal institution of succession could only have been prevented by applying special rules on land succession and farm succession. Under the current regulatory framework, there are several provisions to eliminate undivided common ownership of land and to avoid its formation. After the creation of the Land Transfer Act²⁷ in 2013 and the creation of additional acts²⁸ related to it, there was a small break in the legislation related to this area, but in 2020, the process continued with Act LXXI of 2020 on the Liquidation of Undivided Common Ownership of Land (hereinafter referred to as: Co-ownership Land Act), which launched a wave of legislation,²⁹ one of the aims of which – in addition to promoting generational change and the beginning of the holding regulation – was the elimination of undivided common ownership. This wave continued with two additional acts: Act CXXIII of 2020 on Family Farms³⁰ – which is currently less relevant from the point of view of the topic of the study – and

26 | Act II of 1993 on Land Settlement and Land Allocation Committees

27 | Act CXXII of 2013 on the Transfer of Agricultural and Forest Land. For analysis of this and its background, see: Andr eka 2010, 7-19; Bobvos and Hegyes 2015; Cs ak 2018, 19-32; Cs ak 2010, 20-31; Cs ak and Szil agyi, 2013, 215-233; Fodor 2010, 115-130; Horv ath, 2013, 359-366; Jani, 2013, 15-28; Kapronczai, 2013, 79-92; Kecsk es and Sz ecs enyi, 1997, 721-729; Korom, 2013, 11-24; Mik o, 2013, 151-163; Nagy, 2010, 187-197; Olajos, 2002, 13-17; Olajos and Szil agyi, 2013, 93-110; Prugberger, 2012, 62-65; Raisz, 2017a, 434-443; Raisz, 2017b, 68-74; Vass, 2003, 159-170; Zsoh ar, 2013, 23-24.

28 | Act CCXII of 2013 on Certain Provisions and Transition Rules Related to the Act CXXII of 2013 on the Transfer of Agricultural and Forest Land; Act VII of 2014 on the Detection and Prevention of Legal Transactions Aimed at Circumventing Legal Provisions Restricting the Acquisition of Ownership or Use of Agricultural Land.

29 | See: Szil agyi 2022, 402-411.

30 | See: Olajos 2022b, 300-314; Olajos 2022c, 105-117; Schiller-Dobrovitz 2021, 59-71.

Act CXLIII of 2021 on the Transfer of Agricultural Holdings (hereinafter referred to as: Farm Transfer Act). Some of the provisions of these acts are intended to settle the status quo and are specifically intended to facilitate the liquidation of existing undivided common ownerships. The other part of these provisions is intended to avoid the development of undivided common ownership of agricultural land in the future. The Co-ownership Land Act³¹ contains the rules belonging to the first round, while the provisions belonging to the second round were formulated in several acts.

One of the objectives of the creation of the Co-ownership Land Act is to accelerate the elimination of undivided common land ownership, to settle the ownership relations of agricultural and forest lands in undivided common ownership developed in recent decades, and therefore to create estates that can be economically cultivated for the benefit of Hungarian farmers and that can be used or owned without administrative burdens. In this way, a national estate structure of optimal size and transparent use and ownership can be created. It is also clear from the Preamble of the Act that Parliament is committed to improving the competitiveness of Hungarian farmers on the agricultural market, strengthening their economic positions, and supporting the development of an optimally sized domestic agriculture based on a stable ownership structure.

The act provides several possibilities for achieving this³². The first option is the termination of common ownership by dividing the land, which may be initiated by any co-owner by submitting an application to the real estate authority to record the fact of the ongoing division. The co-owners determine how their shares are to be formed as independent land in a settlement, which must specify exactly the properties created during the allocation and their owners. The Co-ownership Land Act imposes several conditions on the settlement: (1) no jointly owned land may be developed in it, unless the co-owners involved in it expressly agree to it; (2) the new lands to be developed as a result of the settlement must be suitable for the intended agricultural and forestry purposes; and (3) during the division, none of the owners may receive land of a value lower than the value calculated according to the cadastral net income of the land expressed in gold crowns based on their share of ownership in the land that is the basis of the division, unless they expressly agree to it as part of the settlement. According to the legal provisions, under the terms of the settlement, the co-owners may agree on a division other than the shares in the lands on which the division is based.³³

Another innovation of the Act³⁴ is that it introduces a territorial minimum requirement, according to which the land created as a result of the termination of the undivided co-ownership – not including the road used to access the land – may

31 | See: Andr ka 2020, 6-11.

32 | See: Nagy 2022, 102-116.

33 | Co-ownership Land Act Art. 4(1), Art. 6(2), (4), (5), (6), Art. 7(1).

34 | See: Szinay 2022, 29-34.

not be less than 3,000 m² in the case of vineyards, gardens, orchards, and reeds or less than 10,000 m² in the case of cropland, meadows, pastures, forests, and wooded areas, and in the case of any parcel of land shown in the real estate register as non-agricultural land noted under the legal concept of land registered in the Országos Erdőállomány Adattár (National Register of Forests) as forest. In the case of land in mixed cultivation, the rate for the cultivation with the lower minimum area applies. If the object of the division procedure is land classified as closed garden, the land created as a result of the termination of undivided co-ownership cannot be less than 1,000 m². Furthermore, if the land to be developed on the basis of the share of one or more co-owners in the land on which the division is based does not reach the territorial minimum laid down by act, the settlement must provide for the addition of shares below the territorial minimum to the share of another co-owner (annexation). In such a case, as a result of the division, the land must be allocated to the other co-owner in accordance with the combined extent of his/her share in the land on which the division is based and the share of ownership annexed.³⁵

The second option for terminating undivided common ownership is for a single co-owner to take ownership (annexation) of the land. This is possible if the land cannot be converted into at least two parcels of land corresponding to the territorial minimum, since in this case there is no room for the division described above, but the land can be owned by a single co-owner. In such a case, any owner of the land may initiate the annexation of the shares of the other co-owners. For the other co-owners, the acquiring co-owner must pay in consideration an amount at least equal to the value of the land as determined in the valuation offer. If several co-owners indicate their intention to annex, the land may be taken over by the co-owner who undertakes to pay the highest consideration compared to the amount offered for valuation.³⁶

The third option for terminating undivided common ownership is termination by expropriation of the land, whereby any owner of the land may apply to the body responsible for managing the National Land Fund for the expropriation of the whole land by the State with a view to establishing an optimal estate structure, if the division of undivided common ownership has been initiated at least three times without the application being rejected, the termination of undivided common ownership has not taken place within two years of the entry into force of the Co-ownership Land Act, and the number of owners of the land exceeds 100 or more than 30 persons and the ratio between the area in hectares of the land and the number of owners is less than 0.5.³⁷

As mentioned above, there are also provisions to prevent the formation of undivided common ownership. Two of them is the existence of special succession

35 | Co-ownership Land Act Art. 11(1)-(3), Art. 12(1).

36 | Co-ownership Land Act Art. 16(1), (2), (3), (4).

37 | Co-ownership Land Act Art. 18(1).

rules in relation to agricultural lands, since a large percentage of the formation of undivided common ownership occurs due to succession, but special rules serve the purpose of keeping the land in one hand even during succession.³⁸ Unlike Hungary's previous land succession regulation,³⁹ today there are special rules not only for land succession by way of testamentary disposition, but also for intestate land succession.⁴⁰

Special rules on the intestate succession of land are laid down in the Co-ownership Land Act,⁴¹ on the basis of which, if, under the rules of intestate succession, several heirs jointly inherit the agricultural land, – including a legal heir who is entitled only to a compulsory share but who receives that compulsory share from the land in kind –, in order to prevent the creation of undivided common ownership on the land a) they may enter into an allocation agreement; b) the land is transferred by the heir or heirs to another person interested in the succession, to the defaulting heir or to the creditor of the estate, in such a way that co-ownership does not arise; c) the heirs sell the land as a unit; or d) the heirs offer the land free of charge for the benefit of the State. If the previous rules do not lead to results, the co-heirs will inherit the ownership interest in the land, – including a legal heir who is entitled only to a compulsory share but who receives that compulsory share from the land in kind –, according to the rules of intestate succession, provided that within five years: a) they must sell it together; b) it is owned by one of them; c) they must offer it free of charge for the benefit of the State; or d) they must terminate the undivided co-ownership of the land by division of the land or – if the conditions are met – by acquisition of ownership of land by a single co-owner. If the co-heirs do not fulfil these requirements, the land will be compulsorily sold.⁴²

Since its creation, the Land Transfer Act of 2013 contains special provisions on the acquisition of land by testamentary disposition, as opposed to the acquisition of land by intestate succession, which was expressly excluded from the scope of the Land Transfer Act. Therefore, in the case of intestate succession, the formation of undivided common ownership is prevented only by the rules laid down in the Co-ownership Land Act described above. In the case of acquisition of land ownership by testamentary disposition, the conditions of acquisition of ownership of the Land Transfer Act are therefore applicable, the aims of property policy are enforced, and undivided common ownership does not occur.

An essential condition for running viable small and medium-sized agricultural holdings is the presence of an owner and employee base with the appropriate expertise. In general, it can be stated that a large part of those who received land

38 | About the agricultural succession regulation of certain Western European countries, see: Krohnus 2022, 75-92; Prete 2022, 141-154; Muñiz Espada 2020, 171-183.

39 | See: Hornyák 2018; Hornyák 2019.

40 | See: Hornyák 2023, 76-86.

41 | See: Kiss 2022, 39-43.

42 | Co-ownership Land Act Art. 18/A.

during compensation did not have sufficient expertise to cultivate the land. Based on the negative effects of the period before the regime change, the attachment to agricultural land did not attract the younger generation, and so farmers became older and fewer in number. Agricultural activity has since become more valuable and the younger generation is also showing interest in it. In view of the special regulation of land acquisition in Hungary, it was necessary to create an opportunity for young farmers or farmers and owners who are no longer able to operate an agricultural holding to hand over the holding to the young farmer in a simplified procedure.

The transfer of the holding⁴³, a new legal institution in Hungary, is a further tool to prevent the development of undivided common ownership. It is intended to promote generational change in Hungary and can be defined as a step towards holding regulation, as the object of the legal transaction here will no longer be only agricultural land, but the entire holding. The legal institution enables a farm transferor close to retirement age to settle who will be the owner of the farm by means of a farm transfer contract – which has four types: farm transfer sale contract, farm transfer gift contract, farm transfer maintenance contract, and farm transfer life-annuity contract – avoiding the ownership of the farm being settled by succession after death. Another aim is to bring about generational renewal, which is why the legislator has established strict age rules for both farm transferor⁴⁴ and farm transferee,⁴⁵ in addition to the fact that both parties must be a primary agricultural producer or an individual entrepreneur engaged in agricultural and forestry activities. The new regulation also provides for the possibility of knowledge transfer by including in the farm transfer contract a cooperation period of up to five years, during which the parties jointly operate the farm and the farm

43 | See: Olajos 2022a, 29-36.

44 | Farm Transfer Act Art. 2 b) the farm transferor can be a primary agricultural producer or an individual entrepreneur engaged in agricultural and forestry activities, who has reached the age-limit for retirement or will reach it within 5 years from the conclusion of the contract, who a) for at least 10 years, including the period of activity of himself or his legal predecessor, in his/her own name and at his/her own risk, has carried out agricultural and forestry activities or additional activities, and has proven sales revenue derived from this, and b) more than three-quarters of the agricultural and forestry land area defined in the farm transfer contract has been the owner of the land for at least 5 years prior to the date of the farm transfer – with the exception of agricultural and forestry land acquired within 5 years – or has been registered in the land use register for at least 5 years under another legal title a land user, a forest manager registered in the forest management register for at least 5 years, a close relative of this person or the owner of at least 25% of the agricultural production organisation registered as a land user or forest manager.

45 | Farm Transfer Act Art. 2 c) The farm transferee can be a primary agricultural producer or an individual entrepreneur engaged in agricultural and forestry activities who is at least ten years younger than the farm transferor, under the age of 50, who meets the conditions prescribed by law for the operation of the farm to be taken over must either (a) be in the chain of relatives defined in the Family Farms Act with the transferor or (b) have been employed or have been in other employment relationship with the transferor for at least 7 years.

transferor transfers ownership of all elements of the farm to the farm transferee on the last day of the cooperation period.⁴⁶

6. Constitutional Issues⁴⁷

It is not possible to remedy grievances from the period 1939 to 1967 in court proceedings. As stipulated in the Compensation Act, litigation can be initiated for the harm of interests contained therein. In terms of their topic, these proceedings are partially related to the proceedings initiated before the Constitutional Court.

The Constitutional Court has dealt with the issue of conformity with the Constitution of the Compensation Act, and the legal regulation of reparation, in many of its decisions. Below, certain important issues of constitutional interpretation related to compensation will be discussed. Several petitioners turned to the Constitutional Court objecting to the partial nature of compensation, claiming that it violates the right to ownership. The petitioners also complained that the final court decisions rejected their claim to restore their ownership taken during nationalisation.

Constitutional review cannot deal with the assessment of the method of compensation chosen by Parliament, but is limited to whether the solution is contrary to the Constitution. The Constitutional Court found during the preliminary norm review that the Compensation Act is not unconstitutional. The requirement that ownership taken away under previous regimes be returned by the State to its original owner cannot be inferred from the Constitution. Nor does the Constitution require that the State provide full compensation of damages or indemnification. It does not follow from the Constitution that ownership is returned to the owners. The transfer of State ownership to private ownership, which in this case also means its return to its former owners, depends on the free decision of the State as owner whether privatisation or reprivatisation should take place, or whether reparation should take place partially. The reprivatisation argument is dependent on the legal basis that the ownership of the former private owner continues and that the claims arising therefrom are not time-barred. On the other hand, ownership damage remedied during compensation presupposes the loss of ownership. The state has acquired ownership, so the former owners have no ownership claim. Therefore, the Compensation Act does not satisfy ownership claims, i.e. compensation is not due on the original legal basis.⁴⁸ The legal basis for partial compensation is equity.⁴⁹

The reference that the ownership claim is not time-barred because of the acquisition of State ownership based on an unconstitutional legislation is incorrect. The Constitution does not require the return of ownership to be enforced.

46 | Farm Transfer Act Art. 3, Art. 10.

47 | See more about it: Nagy, G 2010, 211-226; Prugberger 1995, 48-64; Sajó 1992 190-209.

48 | Decision of the Constitutional Court 15/1993 (III.12)

49 | See: Téglási 2011.

The restoration of original private ownership and claims for full indemnification are based on other principles. Due to the constitutional solution and regulatory scope of the Compensation Act, it is not the task of the Constitutional Court to decide between different concepts. The Compensation Act is based on distributive justice, which must be examined in the context of the regime change, and the most important constitutional aspect of this is equal treatment.⁵⁰ The issue of discrimination was raised from two perspectives. On the one hand, the exclusion of legal entities from compensation and, on the other hand, that the various legal claims are treated uniformly by the compensation. The Compensation Act treats former owners equally, and the definition of personal scope does not violate the Constitution.⁵¹

The acquisitions entailed by the establishment of a new system of ownership must be reconciled with bearing the burden of transformation. There is no constitutional justification for treating former owners in such a way that their claims are fully satisfied by the legislature in relation to those who suffered injustice or damage to property and moral damage in the past regime, or even to society as a whole bearing the burden of transformation. The legislator acts constitutionally if it takes into account the financial capacity of the country, if it does not leave out any group from the burden of transformation, and if it imposes a proportionate burden on the beneficiaries. The Constitutional Court has pointed out that the Compensation Act could constitutionally burden former members and employees who received free ownership from former social property, as well as local governments, with a certain part of the compensation. A similar burden can be seen in the incompleteness of compensation. In each case, during the establishment of the new system of ownership, under a new title created on the basis thereof, the original acquisition of ownership by new owners occurs. Furthermore, the State acts constitutionally if the remedy for ownership injuries is proportional to the financial compensation provided by acts serving political reparations. Integration into the transformation as a whole allows the legislator to ignore the original legal nature of individual ownership infringements ('novation'). Compensation is not made according to original needs, but within the tasks and possibilities of the new situation, taking into account the distribution of the burden of transformation. According to the Constitutional Court, in the given historical situation, the legislator may constitutionally settle the compensation of former owners on the basis of distributive justice considering the transformation as a whole, instead of individual settlement. This consideration allows not only partial compensation, but also the possibility for compensation legislation to make compensation completely independent of the original title.⁵²

50 | Decision of the Constitutional Court 11/1992 (III.5)

51 | Decision of the Constitutional Court 21/1990 (X.4)

52 | Decision of the Constitutional Court 21/1990 (X.4)

The unconstitutionality of provisions concerning the law of succession has been raised. Under the provisions of the Constitution, it is not unconstitutional for the Compensation Act to introduce rules according to which the deceased claimant provides a claim for compensation to his/her descendants and spouse. Relatives entitled to compensation do not inherit the claim for compensation, i.e. there is no connection between the constitutional right to succession and compensation.⁵³

Already during the preliminary norm control, the Constitutional Court found that it constitutes discrimination if the former ownership of some persons is reprivatised but not that of others. There is no constitutional justification for landowners to get their ownership back in kind, while other former owners should receive only partial monetary compensation.⁵⁴

Within the framework of the preliminary norm control, the Constitutional Court conducted the constitutional review within the requested framework and took a position on the legality of compensation in favour of finding certain regulatory elements unconstitutional. With regard to constitutional motions submitted after the entry into force of the Compensation Act, it can basically be stated that the Constitutional Court found no constitutional concerns.

However, the European Court of Human Rights (ECHR) refused to examine the compensation and the underlying measures because it could not examine violations prior to the entry into force of the European Convention on Human Rights (ECHR) binding on Hungary. In Hungary, the process of compensation started in 1990-1991. Between 1990 and 1994, compensation acts were passed.⁵⁵ This was before Hungary signed the European Convention on Human Rights, so these compensation cases could not, in essence, be brought before the Strasbourg Court.⁵⁶

7. Concluding Remarks

After World War II, the system of large estates was abolished and private peasant ownership was established. Therefore peasant strata's desire for land was satisfied within the framework of a micro- and smallholder structure. During the period of collectivisation, the possibility of using peasant land practically disappeared, and the collective use of peasant private property took place within the framework of the producer cooperative system. From the 1960s until the period of the regime change, the cooperative model became dominant in terms of agricultural production. The political regime change of 1989/90 and the associated economic transformation also meant that the system of large-scale cooperative land use was dismantled and cooperative ownership and partly state ownership

53 | Decision of the Constitutional Court 28/1991 (VI.3)

54 | Decision of the Constitutional Court 21/1990 (X.4)

55 | See: Prugberger 1993, 6-14; Prugberger 1992, 29-57.

56 | Téglaši 2010, 22-47; Bónis 2017, 7-22.

were privatised. Part of this process was the provision of compensation, which primarily meant state reparation for unjust property deprivations (including land ownership) in the period between 1939 and 1967. This also had negative aspects in terms of the concept of reparations, which did not strengthen the market economy character of agricultural activity and agricultural holding. Based on what has been explained within the framework of the study, it can be seen that the disadvantages arising during the transformation of the cooperative system and the model of compensation are still being corrected by economic and land property policy and, accordingly, legal regulation. These problems can be remedied through centrally managed land consolidation, the main tools of which today are: (a) inclusion of land ownership and the acquisition of rights of use within the scope of permission of authority; (b) the introduction of farmer status for professional farming; (c) personal cultivation obligation – exclusion of speculative land acquisition (not for production but for capital income); (d) the right of pre-emption or pre-lease; (e) the land acquisition limit and land possession limit; and (f) land ownership can only be acquired by natural persons, not (usually) by legal entities.

Importance has been placed in Hungarian land property policy on the role of the countryside, including the enhancement of the population and income-generating capacity of villages, the increase of the weight and role of agricultural society, the spread of family farming, the creation of conditions for sustainable land use, and the stabilisation of viable and competitive holding structures and land property relations.

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