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Social Ownership and Restitution of Agricultural Land in Croatia[3]

Abstract

This paper discusses the state of agricultural land in Croatia from a historical perspective. It first discusses the genesis and development of collectivisation of agricultural land in Croatia after the Second World War, particularly with reference to the idiosyncrasies of Yugoslav socialist property as compared to traditional Soviet doctrines. The developments are characterised by gradual changes in legal status as reflections of changing ideologies and policies during the socialist period concerning self-management, as well as sectoral developments (cooperative and industrial sectors). The paper goes on to analyse the transformation of social ownership over agricultural land, both in terms of its direct transformation into state ownership, as well as its in-kind restitution to former rights-holders or their descendants, particularly referencing the causes and consequences of various problems in achieving initial privatisation goals. The paper finally draws conclusions on the current state of agricultural land policies and its prospects.
Keywords: Agricultural land, restitution, social ownership, expropriation, cooperatives, land registration.

I. Introduction

Agricultural land law and policy in transition has, throughout the last twenty years, remained a somewhat less reviewed topic, as the bulk of legal issues concerned developed land and buildings due to the nature of the transition process. However, it is important to recognise that agricultural policy in both its design and its outcomes heavily depends on property-related issues. These were in many

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terms specific to agricultural land, because the developments in property law throughout the entire period after 1945 followed a specific trajectory.

The state of the law after the Second World War in Croatia - with respect to agricultural land, as well as all types of land - was turbulent. The change in the political and economic system from capitalism to socialism meant that agricultural policies balanced between sustaining subsistence farming and promoting organised agricultural production within the new socialist order. The policies were a part of a general socialisation of property, wherein the existing system of private property was radically transformed into a dual system incorporating both private and socialised property. In the area of agricultural land law, these transformations were sometimes complicated by the fact that agricultural land law in some areas still contained feudal structures well into the interwar period (depending on the specific location of the property, due to the historical legal differences caused by various legal regimes present in the Croatian territory). In Croatia and Slavonia feudalism was abolished in 1848,[4] but feudal structures partially lingered in the Croatian Littoral, Dalmatia,[5] and Istria.[6] In many areas archaic land communes and similar structures still existed at the end of the Second World War, when they were dissolved.[7]

The system of social ownership was developed gradually. The development of social ownership closely followed the changes in the socialist socio-economic order, resulting in the concept of social ownership being modified on multiple occasions. These changes produced developments in the organisational forms of social legal persons, and further in the substance and nature of their entitlements,

4 | See Beuc 1980, 18, 29; Bosendorfer, 1980.

5 | In Dalmatia, existing feudal structures were abolished in the interwar period so that land became privately owned by its cultivators. See Zakon o likvidaciji agrarnih odnosa na području ranije pokrajine Dalmacije [Act on the Liquidation of Agrarian Relations in the Territory of the Former Province of Dalmatia], Official Gazette 254/30.

6 | A similar process occurred in Istria, but only after the end of the Second World War. See Odluka o uređenju agrarnih odnosa i poništenju dražbi na području oblasnog Narodnog odbora za Istru [Decision on the Arrangement of Agrarian Relations and Cancellation Auctions on the Territory of the Regional People's Committee for Istria], Official Gazette FNRY 19/46.; Uredba o uređenju agrarnih odnosa i poništenju dražbi na području Kotarskog narodnog odbora Buje [Regulation on the Arrangement of Agrarian Relations and the Cancellation of Auctions on the Territory of the Buje District People's Committee], Official Gazette FNRY 18/46.

7 | See Zakon o proglašenju imovine zemljišnih i njima sličnih zajednica te krajiških imovnih općina općenarodnom imovinom [Act on the Declaration of Patrimony of Land and Similar Communities and Krajina Property Municipalities as the People's Property], Official Gazette 36/47, 51/58, 13/87. Similarly, issues over pre-war usurped agricultural land were still pending after the war. Agrarian reform legislation mandated that all usurpations and unrecognised partitions of land be resolved in the next two years, so that usurpers be granted ownership. These issues were not resolved well into the 1950s, when Croatia passed the Act on regulating property relations created by involuntary seizures (usurpation) of land in the people's property [Zakon o uređenju imovinskih odnosa nastalih samovlasnim zauzećem (uzurpacijom) zemljišta u općenarodnoj imovini], Official gazette 31/58, 20/77, 34/79. These issues were still not resolved well into the 1980s and 1990s. See Simonetti 2009, 459 (noting that in 1988 there were still around 25,000 pending cases).

and therewith in the status of such entitlements within the 'patrimony'[8] of these legal persons in the various stages of development. These stages are: (a) state-owned property (the people's property) with rights of administration (1945-1950), (b) indirect social ownership with rights of use over socially owned assets (1950-1971), (c) direct social ownership with rights of disposition (1971-1988), and (d) the transitional period toward the 'property' notion of rights of disposition (1988).

Immediately after the end of World War II, the state became the owner of vast amounts of property via confiscation,[9] nationalisation,[10] expropriation,[11] agrarian reform[12] and other legal measures. This was the period of 'administrative socialism' characterised by strict state control over all means of production. The newly coined term used for this version of socialist property was 'the people's property' (*općenarodna imovina*) inaugurated in article 14 of the 1946 Constitution.[13] The state was considered the sole owner of all state property, but the rights holders of such ownership were the working people in the concept of the socialist state.[14] [15] The state had ultimate control, and thus rights equal to ownership over such assets. State-owned enterprises were granted the 'right of administration' over such assets, via which they would act as agents of the socialist state.

8 | The term 'patrimony' is used in the traditional civilian sense referring to the totality of rights (and obligations) held by a single legal entity. See generally Nikšić 2012, 1599; Kennedy 2010, 811; Peroni 2018, 368.

9 | See Zakon o konfiskaciji imovine i izvršenju konfiskacije [Confiscation of Property and Enforcement of the Confiscation Act], Official Gazette DFY 40/45, 70/45; Official Gazette FNRY 61/46; Zakon o postupanju sa imovinom, koju su vlasnici morali napustiti u toku okupacije i imovinom, koja im je oduzeta od strane okupatora i njegovih pomagača [Act on the Administration of Property Owners had to Leave During Pccupation and Property Taken from them by the Occupiers and their Collaborators], Official Gazette DFY 36/45, Official Gazette FNRY 64/46, 105/46, 88/47, 99/48; Zakon o oduzimanju ratne dobiti, stečene za vrijeme neprijateljske okupacije [Act on the Confiscation of War Profits Acquired During Enemy Occupation], Official Gazette DFY 36/45; Official Gazette FNRY 52/46. These measures were both punitive and ideologically motivated, promoting the idea of "expropriation of the expropriators." See Marx (1992), 697.

10 | These were effectively mass takings, also carried out via legislation. See Zakon o nacionalizaciji privatnih privrednih poduzeća [Law on the Nationalisation of Private Business Enterprises], Official Gazette FNRY 98/46, 35/48.

11 | These were measures akin to traditional takings. See Osnovni zakon o eksproprijaciji [Basic Law on Expropriation], Official Gazette FNRY 28/47.

12 | See, Zakon o agrarnoj reformi i kolonizaciji [Agrarian Reform and Colonisation Act], Official Gazette DFY 64/45, Official Gazette FNRY 24/46, 101/47, 105/48, 21/56, 55/57, Official Gazette SFRY 10/65; Zakon o provođenju agrarne reforme i kolonizacije na području Narodne Republike Hrvatske [Act on Implementing the Agrarian Reform and Colonisation in the Territory of the People's Republic of Croatia], Official Gazette FNRY 111/47, 25/58, 58/57, 62/57, 32/62.

13 | Ustav Federativne Narodne Republike Jugoslavije [Constitution of the Federal People's Republic of Yugoslavia], Official Gazette FNRY 10/46 art. 14 reads: "The means of production . . . are either the people's property, i.e., the property in the hand of the state, or the property of the people's collective organisations, or the property of private individuals or legal persons. (...) The means of production in the hands of the state are used by the state itself or are given by the state to others to use."

14 | See Opštenarodna imovina, in Blagojević 1989, 1028.

15 | Gavella 2005, 68.

Starting in 1950 an ideological shift toward self-managing socialism favoured eliminating the state as a "third factor between the producers and the means of production".[16] The goal was for workers as producers to take direct control over the production process by managing the means of production.[17] The 1953 Constitution[18] replaced the term 'people's property' with 'social ownership', reflecting the general stance that management should be transferred from the state to the worker's collective. This was effectively done by the Ordinance on the Administration of Basic Assets of Economic Organisations (*Uredba o upravljanju osnovnim sredstvima privrednih organizacija),*[19] which coined the term 'right of use' (*pravo korištenja*).[20]

This stage of development of social ownership is characterised by indirect management over the means of production via socially owned enterprises.[21] State ownership was transformed into social ownership, and the former right of administration was replaced by the right of use. The transformation occurred by operation of law concurrently with the change in corporate form of earlier state-owned companies that became work organisations.[22] The right of use was considered *the* fundamental right over socially owned assets.[23] It was a defined term, in Article 8 of the 1957 Resources Act,[24] as the "organisation's right to use in accordance with the law the resources it had created through its activity, or had acquired via a loan and other credit transactions, or other grounds prescribed by the [Resources Act]." It included the right to dispose of, i.e. to transfer, the resource to some other socially owned entity.[25] It was a broad right over socially owned resources held by a socially

16 | See Vedriš & Klarić 1983, 244; Stojanović 1976, 61. Ownership itself was viewed as inherently harbouring some 'third party' who essentially brokered between the worker and his/her means of production, just like "the slave-owner, the feudal baron, the bourgeoisie, or the socialist state." Ibid.
17 | See Vedriš 1971, 189.
18 | Ustavni zakon o osnovama društvenog i političkog uređenja Federativne Narodne Republike Jugoslavije i saveznim organima vlasti [Constitutional Act on the Foundations of the Social and Political Organisation of the Federative People's Republic of Yugoslavia and Federal Authorities], Official Gazette FNRY 3/53, 4/53. Article 4(1) reads: "Social ownership of the means of production, the producers' self-management in the economy, and self-management of the working people in the municipality, city, and province are the foundation for the social and political order of the country."
19 | Official Gazette FNRY 52/53.
20 | Ibid. article 1(2).
21 | See Pravo korišćenja, in Blagojević 1989, 1236.
22 | See Zakon o uknjižbi nekretnina u društvenom vlasništvu [Act on the Registration of Socially Owned Real Property], Official Gazette SFRY 12/65, Official Gazette 52/71 [hereinafter: "Socially Owned Land Registration Act"], art. 5(1) (stating that the "entries recorded under the [earlier] Regulation on Registration of Ownership over State Real Property are deemed as entries of social ownership, and the record of the administrative body — the record of the holder of the right of use").
23 | See Stojanović 1976, 289.
24 | Zakon o sredstvima privrednih organizacija [Act on the Resources of Economic Organisations], Official Gazette FNRY 54/57, Official Gazette SFRY 10/68, subsequently renamed as Zakon o sredstvima radnih organizacija [Act on the Resources of Work Organisations] [hereinafter: "Resources Act"].
25 | See Resources Act art. 8 (stating that the "right of use also includes the right to dispose of the resources within the limits of the law.")

owned entity, and it was generally conceded that it was a property right in its own right — a novel and autonomous property right over socially owned assets.[26]

The described notion of social ownership remained unchanged after the constitutional reform of 1963. It kept the term social ownership but contained a more detailed set of provisions.[27] According to the 1963 Constitution, it was the work organisation that became the central legal entity endowed[28] with the right of use.[29] All means of production, and "other means of social labour" were socially owned,[30] but the work organisation was the element that linked the workers and their means of production. In this stage, the right of use was included in the "patrimony" of the work organisation,[31] while workers derived their rights over socially owned assets from the work organisation. The work organisation itself was later viewed as exploitative,[32] because it held the right of use as a collective right,[33] encroaching on the worker.[34] This is why this phase is

26 | Vedriš & Klarić 1983, 258. Its content was sometimes considered elusive, because it was defined as "the right and duty to engage a social resource into the production process." Ibid. at 258.

27 | According to Principle III of the 1963 Constitution, "[s]ocially owned means of production, as the common inalienable foundation of social labour are used for the satisfaction of personal and common needs and interests of working people and the development of the material basis of the social community and socialist social relationships. The working people who work with socially owned means of production manage them in their own interest and in the interest of the social community, responsible to each other and to the social community. (...) Starting from the fact that no one has ownership over social means of production, no one – neither the socio-political community, nor the work organisation, nor the individual working man – can, on any legal grounds, appropriate the product of social labour, nor manage, nor dispose of social means of production and labour, nor unilaterally set the terms of distribution." Ustav Socijalističke Federativne Republike Jugoslavije [Constitution of the Socialist Federal Republic of Yugoslavia], Official Gazette SFRY 14/63 [hereinafter: "1963 Constitution"], Principle III. art. 8 further stated that "the means of production and other means of social labour, as well as mineral and other natural resources are socially owned." Ibid.

28 | See ibid. art. 15(2) (stating that the work organisation holds "certain rights with respect to socially owned resources which it manages"). The provision did not expressly enumerate what these rights were. When read with the provisions of the Resources Act, it is clear that these rights are the right of use that included the right of disposition. See also ibid. art. 6 (stating that the "basis of the socioeconomic order of Yugoslavia was the free labour associated by socially owned means of production and self-management of the working people in the production and distribution of the social product in the work organisation and the social community").

29 | Povlakić 2009, 26.

30 | 1963 Constitution art. 8(1).

31 | Pravo korišćenja, in Blagojević 1989, 1236.

32 | Stojanović 1976, 67.

33 | Ibid. at 68.

34 | In modern economic terms, this is the problem of rent-seeking, which self-managing socialism intended to solve by eliminating ownership itself. This is why social ownership was viewed as a socioeconomic relationship wherein the means of production belonged to everyone (every member of the society) at once, and to no one in whole. Because ownership, and all property rights, are exclusionary ex hypothesi, there is an internal contradiction in the term. There is, however, an element of exclusion present, in that rights extend only to members of the working collective ("associated labourers"). In property theory, this ownership type is often termed "limited-access commons." See Rose CM 1998, 129, 155.

usually described as the system of "indirect self-management"[35] and "indirect social ownership."[36]

Under the Resources Act, all assets acquired by work organisations on any legal grounds were considered socially owned.[37] The work organisation had the right to use them in accordance with the provisions of that act, and the right of use comprised the right of disposition and the right to transfer or alienate assets to other work organisations and socially owned legal persons by way of contract, unless otherwise provided by federal law. The work organisation could not transfer its basic assets and assets of joint consumption gratuitously or sell them to individuals or civil legal persons, except if of a lesser commercial interest, or a lesser value.[38] The transfer of land and buildings was covered in the Act on the Transfer of Land and Buildings[39] which prohibited transfers of socially owned land but permitted the acquisition of rights of use.[40] Transfers of land and buildings between work organisations and individuals or civil entities were allowed under specific conditions (barter, sale and further purchase, sale of commercial and residential buildings).[41] Additionally, it was possible for work organisations and socio-political associations to acquire buildings by way of contract, and under the conditions set out in that act, irrespective of who owned them, as well as land from individuals and civil entities.[42]

The third stage of development of social ownership is characterised by a shift to the system of 'direct self-management' and 'direct social-ownership'. This stage was the consequence of an ideological shift, formally expressed in the 1971 Constitutional Amendments XX-XXIII,[43] the 1974 Constitution,[44] and the 1976 Associated Labour Act.[45] The shift was from the former 'property' view of social ownership to

35 | Even though the 1963 Constitution heralded the "non-property" view of social ownership, it is generally accepted that this phase of development still held on to the "property" view of social ownership, because the right of use remained a central right held by an organisation over socially owned assets. See Vedriš & Klarić 1983, 254.
36 | Pravo korišćenja, in Blagojević 1989, 1236.
37 | See Resources Act art. 4.
38 | See Resources Act art. 93(1).
39 | Zakon o prometu zemljišta i zgrada [Act on the Transfer of Land and Buildings], Official Gazette FNRY 26/54, 19/55, 48/58, 52/58, 30/62, 53/62, Official Gazette SFRY 15/65, 57/65, 17/67, 11/74, N.N. 27/91 [hereinafter: "Transfer of Land Act"].
40 | See Transfer of Land Act art. 1(1).
41 | See ibid. art. 17-22.
42 | See ibid. art. 4.
43 | Amandmani na Ustav Socijalističke Federativne Republike Jugoslavije [Amendments to the Constitution of the Socialist Federal Republic of Yugoslavia], Official Gazette SFRY 29/71.
44 | Ustav Socijalističke Federativne Republike Jugoslavije [Constitution of the Socialist Federal Republic of Yugoslavia], Official Gazette SFRY 9/74 [hereinafter: "1974 Constitution"].
45 | Zakon o udruženom radu [Associated Labour Act], Official Gazette SFRY 53/76, 57/83, 85/87, 6/88, 40/89. The Associated Labour Act was the fundamental legislative source for social ownership. It was a successor of sorts to the Resources Act, and the Zakon o prometu društvenih sredstava osnovnih organizacija udruženog rada [Act on the Transfer of Social Resources of Basic Organisations of Associated Labour], Official Gazette SFRY 22/73.

the new 'non-property' view of social ownership. The difference was in that the 'non-property' view held that social ownership was a mere economic relationship where a socially owned asset not only belongs to no one and everyone concurrently, but does not 'belong' at all. It was simply a means to an end — to facilitate associated labour, which was the central tenet of self-management.[46] Article 13 of both the 1974 Constitution and the Associated Labour Act inaugurated 'the right to work' as a fundamental right of the worker.[47]

The new notion of social ownership introduced by the 1974 Constitution was founded on the idea of associated labour, wherein the workers' labour and their means of production were united - associated - to form the basis for maintaining and developing the socialist society.[48] The basic organisational form became the "basic organisation of associated labour".[49] The workers themselves and their labour became the core of the entire economic and legal system,[50] where the worker originally held the 'right to work' (i.e. produce, with socially owned assets as the means of production). Organisational forms existed only to facilitate transactions — to participate in the economy and acquire assets, rights, and duties, but only to immediately have them subject to the workers' right to work.[51]

The workers who "associated their labour" had the right and duty to "use and dispose over socially owned assets",[52] but because they held this right collectively,

46 | See Vedriš & Klarić 1983, 267.

47 | Art. 13 of the 1974 Constitution read: "The worker in associated labour has the right to work with socially owned assets as his/her inalienable right to work with such assets in order to satisfy his/her personal and social needs and to manage, as free and equal with other workers in associated labour, his/her labour and the conditions and the results of his/her labour." Art. 13 of the Associated Labour Act read: "Each worker who works in associated labour with socially owned assets has the right to work with socially owned assets as his/her inalienable right to work with such assets for the satisfaction of his/her personal and social needs, and to manage, as free and equal with other workers, his/her labour, the conditions and the results of his/her labour." Socially owned assets were defined as "[t]he common material base for sustaining and developing the socialist society and socialist self-managing relations, and they are managed by the workers in a basic organisation of associated labour, and in all other forms of association of labour and assets, workers in a working community and other working people in a self-managing interest community or other self-managing organisations and communities, and the socio-political community." Associated Labour Act art. 10(1).

48 | Note that the theory of social ownership in Yugoslavia was far from settled, and there were numerous views on who and what this relationship included. See Stojanović 1976, 63; Simonetti 2009, 323.

49 | It was a part of the collective work organisation which constituted a unit "where the results of common labour could be valued independently in a work organisation or the market, and wherein [the workers] could realise their socio-economic and other self-management rights." Associated Labour Act art. 14.

50 | See Gavella 2005, 58, 75.

51 | Vedriš & Klarić 1983, 279. The fundamental change inaugurated by the 1974 Constitution, supporting the 'non-property' view of social ownership, was the origin and focus of entitlement. It was believed to rest in the worker, who had a general 'right to work' with the social means of labour.

52 | Associated Labour Act art. 231. Socially owned assets of a legal person were defined as "things, money, and material rights which are a material condition of [the workers'] labour, and the material foundation for the achievement of tasks within that socially owned legal person." Associated Labour Act ar. 265.

it was next to impossible for them to legally transact. In order to overcome this restriction, the Associated Labour Act endowed socially owned legal persons[53] with the 'right of disposition'.[54] The right of disposition was defined as the right of a socially owned entity (e.g. the basic organisation of associated labour) to conclude self-management agreements and contracts, and other transactions and acts within their legal capacity.[55] In theory, it wasn't a property right; in fact, it was sometimes considered as not a right at all, but simply a mode of exercising the right to work, akin to legal capacity itself.[56] It was a legally recognised as a power to dispose over individual socially owned assets and comprised a set of entitlements allowing the socially owned legal person to legally act and dispose of socially owned assets.[57] Consequently, associated labour organisations had no assets or patrimony of their own, nor a direct right of use over socially owned assets. They only held a derivative entitlement - the right of disposition - derived from the right to work,[58] which replaced the earlier right of use.

This is why this understanding of social ownership is termed as 'non-property' wherein social ownership is functionally defined as "a socialist socio-economic relationship wherein the means of production and other means of societal work as well as mining and other natural resources belong to every member of the society and all members of the society contemporaneously, but to no one in whole, or exclusively."[59] In exercising this right, associated labour organisations were authorised to transfer socially owned assets to other socially owned legal persons, acquire assets from private owners to the benefit of social ownership, authorise temporary use of socially owned assets, barter with socially owned assets and otherwise dispose of them.[60] The right of disposition over some assets also included the right to remove them from social ownership by transfer to individuals or civil entities but this was not permissible for agricultural land.[61]

In the final stage of development of social ownership, the right of disposition was converted back into a quasi-ownership right and reincorporated into the 'patrimony' of enterprises that used socially owned assets in their business, which also

53 | Associated Labour Act art. 244(1). The right of disposition could be transferred from the basic organisation to other organisational forms of associated labour. See Associated Labour Act art. 244(2).
54 | Technically, the workers still needed an organised form to exercise this right, and this was the 'basic organisation of associated labour', which was the single legal entity originally endowed with the 'right of disposition'.
55 | Associated Labour Act art. 243(1).
56 | See Vedriš & Klarić 1983, 282. See also Vedriš 1976, 32 – 33. See Gavella 2005, 76. See also Simonetti 2009, 330. See generally Gams 1988, 251 – 316; Vedriš 1986, 659; Đurović 1979; Vedriš 1977. A part of the literature did hold that the right of disposition was a patrimonial right belonging to socially owned legal persons. See Stojanović 1976, 291.
57 | See Stojanović 1976, 291.
58 | Pravo korišćenja, in Blagojević 1989, 1237.
59 | Vedriš 1971, 195.
60 | Associated Labour Act art. 243(2).
61 | Associated Labour Act art. 248(1).

resulted in relaxing the rules on transfers of socially owned assets, because the earlier restrictions under the Associated Labour Act did not apply to reorganised enterprises. The change took place after the passage of the 1988 Constitutional Amendments,[62] and the Enterprises Act of 1988.[63] The theory behind this conversion was in the introduction of the term 'patrimony' into the provisions of the Enterprises Act, which was impossible unless there were property rights involved. All enterprises had a 'patrimony' composed of "things, rights, and money,"[64] under Enterprises Act art. 160, and they were liable for their debts with all of the assets they used and disposed over.

The transitional provisions of the Enterprises Act mandated that work organisations adjust their self-management acts with the Enterprises Act by December 311989.[65] After these adjustments were completed, the provisions of the Associated Labour Act no longer applied to such enterprises.[66] Dispositions under the Enterprises Act were adjusted to the 'property' view of social ownership,[67] hence the assets of the enterprise were generally transferable, and, when prescribed by law, transferable with restrictions, or non-transferable.[68] The Enterprises Act did not abolish social ownership, nor did it transform existing socially owned enterprises into corporations, nor the right of disposition over such assets, which remained as such.

This paper proceeds as follows: in Part II we present the complex development of collectivisation and socialisation of agricultural land in Croatia during the socialist period. In Part III we discuss the transformation of social ownership, first by giving an overview of the transformation process, and then by discussing the specific issues concerning the transformation of rights over agricultural land under the general rules pursuant to the Ownership Act. In Part IV we analyse the restitution process, with particular reference to agricultural land, and in Part V we discuss the development of the still ongoing process of privatisation of state-owned agricultural land. Part VI concludes.

62 | Ustavni amandmani IX-XLVII na Ustav SFRJ [Constitutional Amendments IX-XLVII to the Constitution of the SFRY], Official Gazette SFRY 70/88.
63 | Zakon o poduzećima [Enterprises Act], Official Gazette SFRY 77/88, 40/89, 46/1990, 61/90, Official Gazette 53/91, 71/91, 26/93, 58/93.
64 | In fact, the enterprise was defined as a "legal person who is the holder of rights and obligations in legal transaction with respect to all assets it disposes over and which it uses (...)" Enterprises Act art. 1(2) (emphasis added).
65 | See Enterprises Act art. 192(3) (July 15, 1989).
66 | See Enterprises Act art. 196(2).
67 | See Enterprises Act art. 163-167.
68 | See Enterprises Act art. 163.

II. Collectivisation and Socialisation of Agricultural Land in Croatia

In order to understand the decollectivisation of agricultural land in Croatia, a brief overview of the collectivisation that preceded it is necessary. The collectivisation process was initiated in 1945 with the passage of the Agrarian Reform and Colonisation Act.[69] This was not the first agrarian reform executed in the territory,[70] but was far more systemic and overreaching. The proclaimed principle was the one that "land belongs to those who cultivate it",[71] with the goal of allocating agricultural land to landless farmers or farmers with insufficient land.[72] Unlike the proclaimed Soviet agrarian reforms,[73] the allocated land was privately owned, hence the agrarian reform consisted of two separate legal stages: expropriation and allotment. Expropriation included all large properties,[74] properties owned by banks and corporations (with exceptions), churches and other religious institutions,[75] abandoned properties, as well as all excess arable land over a set maximum[76] area.[77]

69 | Zakon o agrarnoj reformi i kolonizaciji [Agrarian Reform and Colonisation Act] Official Gazette DFY br. 64/45, Official Gazette FNRY 24/46, 101/47, 105/48, 21/56, 55/57, Official Gazette SFRY 10/65 [hereinafter: "Agrarian Reform Act"].

70 | Earlier agrarian reforms happened after World War I. See Simonetti 2009, 166.

71 | This principle was explicitly stated in art. 1 of the Agrarian Reform Act.

72 | See Agricultural Reform Act, art. 1.

73 | Soviet agrarian reform in 1918 initially sought to socialise all land, abolish private property, and redistribute toil tenure, but immediately deviated from this policy in 1919 by making all expropriated land publicly owned. See Gsovski 1948, 689 – 693 (noting, however, that these reforms remained ineffective because "the peasants interpreted the soviet decrees as authorising the seizure and redistribution of large estates. And so it transpired that the bulk of the agricultural land in European Russia (96 per cent) was actually taken over by peasants and used from 1918 to 1921 in a traditional manner as established by the imperial laws for 'allotted' land, regardless of Soviet decrees and their underlying theory." Ibid. at 693. Later, under the New Economic Policy introduced in 1922, "factual holding was recognised as a title, so that each local peasant unit, township, or village commune had to continue to use the land which happened to be in its actual possession", although only by way of toil tenure on public land. Ibid. at 697, 702. Concurrently, the New Economic Policy pushed for the development of various forms of collective farms, most importantly the kolhoz (while eliminating wealthy individual farmers, kulaki, as the 'rural bourgeoisie' or the 'last capitalist class') which would become the dominant form of agricultural production in the period from 1929 until the end of the Second World War. Ibid. at 706.

74 | These were defined as agricultural land over 45 hectares, or 25 to 35 hectares of arable land (fields, meadows, orchards, and vineyards) if exploited by way of lease or hired labour). See Agrarian Reform Act art. 3(1)(a) and art. 26(1). In Croatian, Zakon o provođenju agrarne reforme i kolonizacije na području Narodne Republike Hrvatske, [Act on implementing the agrarian reform and colonisation in the territory of the People's Republic of Croatia], Official Gazette FNRY 111/47, 25/58, 58/57, 62/57, 32/62, set this maximum at 20-25 hectares for agricultural land (art. 15(1), and 8-30 hectares for forestland (art. 16).

75 | Religious institutions were granted exceptions for 10-30 hectares of agricultural land. See Agrarian Reform Act art. 8.

76 | These were set at no less than 20, and no more than 35 hectares of arable land depending on the number of family members, soil quality and crop type. See Agrarian Reform Act art. 5(1).

77 | See Agrarian Reform Act art. 3.

The expropriated agricultural land became state-owned, with no compensation,[78] except in cases of excess expropriation.[79]

Expropriated property, along with previously confiscated land[80] as well as state-owned designated land,[81] was included in the state-owned agrarian land fund,[82] which served as the source for land allotment. The allotment was designed for subsistence farming either for farmers already living in the area or for settling in a different area.[83] The allotted agricultural land area was between around 17 and 70 hectares per family,[84] with veterans and their families enjoying priority allotment.[85]

The beneficiaries were household members, who were each granted an equal co-ownership share of the allotted property.[86] The allotted agricultural land was prohibited from alienation including sales, leases, or mortgages, for a subsequent period of 20 (later reduced to 15) years,[87] and 10 years for forestland.[88] Both co-ownership and restraints on alienation were registrable in the relevant land register,[89] however registration was declaratory. This was particularly important due to the role of the land register under the existing land registration system, discussed below, and the transformation of the entire system of land law into a dual system of socialised property and private property. As the agrarian reform resulted in grants of ownership (i.e. private property), such land was removed from socialised property ('the people's property') where only quasi-ownership rights were available. In many cases, due to the preceding state of the land register, or the inadequacies in the documents issued and submitted, decisions on agrarian reform allotment were not duly registered, causing subsequent confusion as to the property rights over such land.[90]

78 | See Agrarian Reform Act art. 4(1).
79 | See Agrarian Reform Act art. 6.
80 | This included land previously owned by German nationals, enemies of the state. See Agrarian Reform Act art. 10.
81 | See ibid.
82 | See ibid.
83 | See Agrarian Reform Act art. 12. and 15. Settlers who missed the set relocation deadline would forfeit the land allotment. See Agrarian Reform act art. 25.
84 | See Agrarian Reform Act art. 19.
85 | See Agrarian Reform Act art. 16. For forestland, the area was set at 1-10 hectares, and the beneficiaries of forestland were obligated to forest unforested forestland within a five-year period, or be subjected to being stripped of the ownership. See Osnovni zakon o postupanju sa ekspropriranim i konfisciranim šumskim posjedima [Basic Act on Administering Expropriated and Confiscated Forestland] Official Gazette 61/46, art. 12.
86 | See Agrarian Reform Act art. 2.
87 | See Agrarian Reform Act art. 24. Inheriting such property was, however, permitted.
88 | See Basic Act on Administering Expropriated and Confiscated Forestland art. 11.
89 | See Agrarian Reform Act art. 24.
90 | See Simonetti 2009, 176 (noting that the Ministry of Justice and General Administration issued a memorandum in 1969 instructing that any applications to amend earlier agrarian reform decisions be delegated to the cadastral authority in order to conduct appropriate parcel identification and then relayed to the land registration court. If the courts were unable to proceed, they were to order the

Concurrently with agrarian reform, post-war socialist reforms introduced peasant cooperatives, following the Soviet collectivisation model. The 1946 Constitution explicitly mentions cooperative property as a separate category of property over means of production, along with public and private property,[91] and cooperatives were guaranteed 'special attention' by the state.[92] Cooperatives were regulated in 1946 under the Basic Act on Cooperatives,[93] which introduced the arrangement of peasant cooperatives. Unlike earlier cooperatives, which were privately organised for the benefit of their members,[94] the new cooperatives were designed for the benefit of the working people and state interests.[95] Similarly, the 1949 Basic Act on Agricultural Cooperatives[96] contained provisions on various models (types) of pooling land (including transfers to the cooperative)[97] which ultimately served public interests. The cooperative had its own property (cooperative property) which could be sourced from state-owned property over which the cooperative was granted rights of use, or private property of the cooperative members transferred to the cooperative.[98] Cooperatively owned land could not become privately owned land on any grounds, but could only be transferred to the state or another cooperative.[99] Irrespective of whether the land (ownership) was transferred to the cooperative or not, the cooperative members were prohibited from alienating pooled land, and could see few benefits from joining the cooperative.

The Soviet experiment was quickly perceived as unsustainable and failed, and was thus abandoned.[100] The 1953 Ordinance on Property Relations and Reorganisation of Peasant Cooperatives[101] relaxed the existing regime by allowing cooperatives to reorganise or liquidate, with the land being returned to existing cooperative members and provided an early exit option.[102] The 1949 Act was repealed by the 1954 Ordinance on Agricultural Cooperatives,[103] which finally

party to take appropriate steps to update the land register, or pay a fine, under par. 85 of the Zakon o zemljišnim knjigama [Land Registration Act], Official Gazette of Kingdom of Yugoslavia, 146/30 [hereinafter: "Land Registration Act of 1930"].

91 | See Constitution 1946, art. 14(1).

92 | See ibid. art. 17.

93 | Osnovni Zakon o zadrugama [Basic Act on Cooperatives], Official Gazette FNRY 59/46.

94 | See Zakon o privrednim zadrugama [Act on Economic Cooperatives], Official Gazette of Kingdom of Yugoslavia, 217/37. par.1.

95 | See ibid. art. 1. See Matijašević 2005, 153 – 170.

96 | See Osnovni zakon o zemljoradničkim zadrugama [Basic Act on Agricultural Cooperatives] Official Gazette FNRY 49/49.

97 | See ibid. art. 62.

98 | See ibid. art. 7.

99 | See ibid. art. 9.

100 | See Juriša 1983, 55 – 73.

101 | Uredba o imovinskim odnosima i reorganizaciji seljačkih radnih zadruga [Regulation on property relations and the reorganisation of peasant labour cooperatives], Official Gazette FNRY 14/53, 20/54.

102 | See ibid. art. 50.

103 | Uredba o zemljoradničkim zadrugama [Regulation on agricultural cooperatives] Official Gazette FNRY 5/54, 34/56, 41/56, 15/58, 18/58, 30/58, 22/59, 49/59, 10/61, 18/61.

dismantled the Soviet collectivisation model and allowed all cooperative members to voluntarily exit the cooperative and have the land previously transferred to the cooperative returned to them, or seek compensation. The 1953 Constitution did not recognise cooperative property, but only social property over means of production, so cooperative property was socially owned.[104]

In 1953 all publicly owned agricultural land was pooled into the agricultural land fund of the people's property (*poljoprivredni zemljišni fond općenarodne imovine*),[105] along with all excess arable agricultural land over 10 hectares that was privately owned,[106] effectively nationalising all such land.[107] These takings were not without compensation. The compensation was set at 30-100,000 dinars per hectare of arable land[108] and was paid out over a period of 20 years in the form of government bearer bonds, without interest.[109] The fund served as a source of land to be granted for perpetual use to agricultural organisations.[110] The land was socially owned, and was registered as such in the land register (with the right of use to the benefit of the agricultural organisation).[111] The nationalised excess land remained in possession of the previous owners free of charge for use until it was granted for use to an agricultural organisation.[112] The granting of rights of use to agricultural organisations was initiated by these organisations, or individual farmers or agricultural workers who intended to form such an organisation.[113] The final decree granting such rights of use served as a registration title for these rights in the land register.[114]

The agricultural organisation with rights of use over allotted agricultural land was prohibited from alienating the land[115] but could apply to the public authority for an exchange or sale and purchase of a different parcel,[116] or for the transfer of rights of use to another agricultural organisation.[117] If no right of use existed, the public authority could also carry out an swap for another agricultural property of

104 | See ibid. art. 11.
105 | See Zakon o poljoprivrednom zemljišnom fondu općenarodne imovine i dodjeljivanju zemlje poljoprivrednim organizacijama [Act on the Agricultural Land Fund of the People's Property and Allocation of Land to Agricultural Organisations], Official Gazette FNRY 22/53., 27/53., 4/57. i 46/62, Official Gazette SFRY 10/65, art. 1.
106 | See ibid. art. 3.
107 | The excess was calculated by adding up the total area of all arable land that was in fact cultivated by the head of each household and the household members, or whoever shared its profits, irrespective of the ownership registered in the land register. See ibid. art. 21.
108 | See ibid. art. 23.
109 | See ibid. art. 24.
110 | See ibid. art. 7 and 13(2).
111 | See ibid. art. 15.
112 | See ibid. art. 27.
113 | See ibid. art. 28.
114 | See ibid. art. 31.
115 | See ibid. art. 16 and 33.
116 | See ibid. art. 33(3),
117 | See ibid. art. 33 (4).

the same value, or sell the property and purchase another agricultural property from the earnings.[118]

The new ideal, in line with self-management, was to focus on agricultural production in socially owned agricultural organisations self-managed by the workers. Agricultural organisations were socially owned economic organisations. The earlier state-owned enterprises managed state-owned agricultural land in a top-down model.[119] Self-management was introduced in 1949 with the Basic Act on Administration of State Economic Enterprises and Higher Economic Associations by Work Collectives,[120] while enterprises were still state-owned. They were transformed into economic organisations, where administration was ceded to the work collectives for the benefit of the entire society,[121] following the principles enshrined in the 1953 Constitution.[122] Ten years later, economic organisations were transformed into 'work organisations' under the 1963 Constitution.[123] The enterprise, which now enjoyed a greater degree of autonomy, was an independent and fundamental work organisation,[124] with socially owned resources.[125] Particularly relevant in agriculture were 'combined enterprises' (*kombinati*), which were created by merging several enterprises or cooperatives with activities spanning various branches of production,[126] e.g. agricultural-industrial, industrial-alimentary etc. These combined enterprises remained the major players in the agricultural sector during the entire socialist period.

As explained in the introduction, the initial system of indirect self-management was subsequently transformed into a system of direct self-management in the 1971-1976 period, so work organisations ultimately became 'associated labour organisations'[127] wherein workers directly and equally exercised their self-management rights.[128] Dominant corporate forms at the time were the 'basic associated labour organisation' (*osnovna organizacija udruženog rada, OOUR*),[129] which comprised work collectives, and the 'complex associated labour organisation'

118 | See ibid. art. 16.
119 | See Zakon o upravljanju državnim poljoprivrednim dobrima [Act on the Management of State-owned Agricultural Assets], Official Gazette DFY 56/45.
120 | See Osnovni zakon o upravljanju državnim privrednim poduzećima i višim privrednim udruženjima od strane radnih kolektiva [Basic Act on the Management of State-owned Economic Enterprises and Higher Economic Associations by Labour Collectives], Official Gazette FNRY 43/50.
121 | See Uredba o upravljanju osnovnim sredstvima privrednih organizacija [Regulation on the Management of the Basic Assets of Economic Organisations], Official Gazette FNRY 52/53.
122 | See 1953 Constitution, art. 4 and 6.
123 | See 1963 Constitution, art. 15.
124 | See Zakon o poduzećima [Enterprises Act], art. 1(2).
125 | See ibid. art. 16(3).
126 | See Zakon o poduzećima [Enterprises Act], art. 95.
127 | See Zakon o konstituiranju i upisu u sudski registar organizacija udruženog rada [Act on the Establishment and Registration in the Court Register of Associated Labour Organisations], Official Gazette SFRY 22/73, 63/73.
128 | See 1974 Constitution, art. 14(2).
129 | See Associated Labour Act, art. 280-313.

(*složena organizacija udruženog rada, SOUR*).[130] Complex associated labour organisations in the agricultural sector included combined types as well.

The cooperative sector remained active during the entire period of self-management. Under the 1954 Regulation on Agricultural Cooperatives, economic enterprises could be established, managed by work collectives,[131] which could contract with other economic organisations.[132] Cooperatives could also enter into agricultural land lease contracts and employment contracts with their members,[133] as well as alliances with other cooperatives.[134] Cooperatives were later transformed into economic organisations under the Basic Act on Agricultural Cooperatives[135] managed by work associations,[136] and after the inauguration of direct self-management they became a form of association in agriculture under the 1973 Act on Association in Agriculture.[137] The Associated Labour Act contained detailed provisions on the inclusion of individual labour into the system of self-managed associated labour.[138] These provisions regulated agricultural cooperatives,[139] basic cooperative organisations,[140] as well as cooperative work organisations within complex associated labour organisations.[141] Agricultural cooperatives comprised basic associated labour organisations, basic cooperative organisations, or work associations.[142] All of the various relationships were regulated under self-management agreements.[143] Individual farmers who combined land kept ownership over such land unless it was transferred into social ownership under the self-management agreement.[144] Agricultural cooperatives could also unite into complex agricultural cooperatives,[145] as well as cooperative alliances.[146]

Another measure that targeted agricultural land during the socialist period was land consolidation. Land consolidation had two variants: land consolidation by merger and land consolidation by reallocation. Land consolidation by merger (*arondacija*) was a method used to merge privately owned parcels with larger

130 | See Associated Labour Act, art. 354-361.
131 | Uredba o zemljoradničkim zadrugama [Regulation on Agricultural Cooperatives], art. 7 and 36.
132 | See ibid. art. 26
133 | See ibid. art. 81. and 22.
134 | See ibid. art. 69.
135 | See Osnovni zakon o poljoprivrednim zadrugama [Basic Act on Agricultural Cooperatives] Official Gazette SFRY 13/65, 7/67, Official Gazette 52/71, Zakon o udruživanju poljoprivrednika [Association of Farmers Act] (Official Gazette 31/73).
136 | See ibid. art. 19.
137 | See Zakon o udruživanju poljoprivrednika [Association of Farmers Act] Official Gazette 71/73.
138 | See ibid. art. 5(2).
139 | See Associated Labour Act art. 275
140 | See Associated Labour Act art. 292.
141 | See Associated Labour Act art. 293
142 | See Associated Labour Act art. 279.
143 | See ibid. art. 280.
144 | See Associated Labour Act art. 281
145 | See Associated Labour Act art. 288
146 | See Associated Labour art. 300

compounds of socially owned land, where expropriated owners would receive other land outside the compound, or financial compensation.[147] This method was particularly relevant during the socialist period because it facilitated the feeding of social ownership and further grants of rights of use to the benefit of socially owned agricultural organisations. On the other hand, land consolidation by reallocation (*komasacija*) was a method used (and is still used today)[148] to restructure and redistribute fragmented farmland parcels within a consolidation area.[149] This would result in owners acquiring ownership over larger parcels of equal value, of the same class, and in the same area. Both methods were used with the purpose of achieving a more efficient management and exploitation of agricultural land.

The use of agricultural land was regulated during the entire socialist period by special legislation (agricultural acts). Agricultural land was predominantly used by agricultural organisations, first defined as cooperatives, agricultural landholdings, and other economic organisations and institutions with agricultural activity,[150] and later defined as associated labour organisations, agricultural cooperatives, and other forms of association of farms, as well as institutions performing farming.[151] Agricultural organisations could transfer agricultural land to other agricultural organisations.[152] These organisations also enjoyed pre-emption rights in all sales by individuals[153] and leases.[154] They could also sell and lease agricultural land to individuals[155] where land maximums applied.[156] Individual ownership of agricultural land existed throughout the socialist period, however it was capped at a maximum area, as previously described.[157] Economic organisations could trans-

147 | See Uredba o arondaciji državnih poljoprivrednih dobara općedržavnog značaja [Regulation on the Consolidation of State Agricultural Assets of State Interest] (Official Gazette FNRY 99/46), Uredba o arondaciji zemljišta i poljoprivrednih dobara i seljačkih radnih zadruga [Regulation on the Consolidation of Land and Agricultural Assets and Peasant Labour Cooperatives] (Official Gazette FNRY 50/51, 1/52), Zakon o iskorištavanju poljoprivrednog zemljišta [Exploitation of Agricultural Land Act] (Official Gazette FNRY 43/59) arts. 36-49, Zakon o arondaciji [Land Consolidation Act] (Official Gazette 6/76., 5/84, 5/87). See Vasić 1961, 400 – 441.

148 | See Zakon o komasaciji poljoprivrednog zemljišta [Agricultural Land Consolidation Act], Official Gazette 51/15; Zakon o komasaciji poljoprivrednog zemljišta [Agricultural Land Consolidation Act], Official Gazette 46/22. See Staničić 2016, 77 – 112; Staničić 2022, 112 – 125.

149 | See Zakon o komasaciji zemljišta [Land Consolidation Act] (Official Gazette FNRY 60/54, 11/55, 15/1965, 21/1965), Zakon o iskorištavanju poljoprivrednog zemljišta [Exploitation of Agricultural Land Act] (Official Gazette FNRY 43/59) arts. 50-69, Zakon o komasaciji [Consolidation Act] (Official Gazette 10/79, 21/84, 5/87). See Panjaković 1990, 237 – 243; Medić 1978, 37 – 42.

150 | Zakon o poljoprivrednom zemljišnom fondu, art. 7(2).

151 | See Zakon o poljoprivrednom zemljištu [Agricultural Land Act], Official Gazette 26/84, 19/90, 24/90, 41/90 [hereinafter: "Agricultural Land Act (1984)"], art. 4.

152 | See Transfer of Land Act art. 17; Agricultural Land Act (1984) art. 82.

153 | See ibid. art. 92-94

154 | See ibid. art. 98

155 | See arts. 84-85.

156 | See art. 97 (1984), and arts. 95-97 (1990) (removing the maximums for leases).

157 | See Transfer of Land Act art. 14.

fer land to individuals (barter or sale and further purchase),[158] and individuals could freely transact with respect to their land within the prescribed caps. Ownership of such land was constitutionally guaranteed to farmers by express provisions of the constitution.[159]

III. Transformation of Social Ownership and Restitution of Agricultural land in Croatia

A. The Transformation of Social Ownership

The transformation of social ownership into private ownership was a long and complex process.[160] The transformation process broadly took two avenues: one of restitution (denationalisation), and the other of conversion (or transformation *stricto sensu*). Restitution, and other forms of redress were legislated in the Act on the Compensation for Property Taken during the Yugoslav Communist Rule,[161] and is discussed further below. The second avenue of transformation was legislated in an array of statutes, covering different types of real property depending on their previous status, land use, and other criteria. This transformation was tightly linked to and coincided with the conversion of socially owned legal persons into private legal persons. The most important statute relevant for this transformation was the Act on the Transformation of Socially Owned Enterprises,[162] as the transformation of socially owned enterprises had both the effect of a transformation of corporate form - from the socially owned enterprise into a company with a known owner - and the transformation of quasi-ownership rights (such as the right of use) into ownership.[163] It is this transformation of the socially owned enterprise into a corporation that justified and legally allowed the transformation of rights of

158 | See ibid. art. 17.
159 | See 1963 Constitution, art. 21(2), 1974 Constitution, art. 80.
160 | At the time the Croatian Constitution was passed in 1990, it was clear that socialism and its economic doctrine was abandoned. Legally, this was reflected in article 48(1) of the Ustav Republike Hrvatske [Constitution of the Republic of Croatia], Official Gazette 56/90, 135/97, 113/00, 28/01, 76/10, which simply states: "Ownership is guaranteed."
161 | Zakon o naknadi za imovinu oduzetu za vrijeme jugoslavenske komunistički vladavine [Act on the Compensation for Property Taken During Yugoslav Communist Rule], Official Gazette 92/96, 80/02, 81/02, partially invalidated by USRH U-I-673/96, Official Gazette 39/99, 43/00, 131/00, 27/01, 34/2001, 65/01, 118/01 [hereinafter: "Restitution Act"]
162 | Zakon o pretvorbi društvenih poduzeća [Act on the Transformation of Socially Owned Enterprises], Official Gazette 19/91, 26/91, 45/92, 83/92, 84/92, 18/93, 94/93, 2/94, 9/95, 42/95, 21/1996, 118/99, 99/03 [hereinafter: "Transformation Act"].
163 | See Simonetti 2009, 622. According to the Transformation Act a socially owned enterprise could be converted into a joint stock company or an LLC by way of a sale, investment of capital, conversion of investments and claims into shares, and by way of transfer to certain funds. See Transformation Act art. 6.

socially owned land into traditional ownership.[164] Other legislation provided for the transformation of other (specifically designated) legal persons.[165]

B. Transformation of Rights over Agricultural Land

Socially owned agricultural land presented one of the special cases in the transformation of social ownership. The 1991 Agricultural Land Act[166] declares agricultural land as an asset under the special protection of the republic.[167] Agricultural land was defined as "fields, gardens, orchards, vineyards, meadows, pastures, fisheries, sedgelands, and swamplands that are not particularly valuable biotopes, as well as other land that is used, or is not used, but can be cultivated for agricultural production."[168] According to Agricultural Land Act article 3(1), the Republic of Croatia becomes the owner of socially owned agricultural land on the territory of the republic. Hence, the republic became the owner of all such land on the date that these provisions came into force, i.e., July 24 1991, by operation of law.[169]

164 | See Gavella & Josipović 2003, 97, 103; Simonetti 2009, 636; Barbić 1992, 11; Žuvela & Crnić 2007, 97, 135.

165 | See e.g., Zakon o lokalnoj samoupravi i upravi [Act on Local Self-Government and Government], Official Gazette 90/92, 94/93, 117/93, 5/97, 17/99, 128/99., 51/00, 105/00; Zakon o ustanovama [Institutions Act], Official Gazette 76/93, 29/97, 47/99, 35/08; See generally Josipović 1999, 19, 21, 25.

166 | Zakon o poljoprivrednom zemljištu [Agricultural Land Act] Official Gazette 34/91, 26/93, 79/93, 90/93, 48/95, 19/98, 105/99 [hereinafter: "Agricultural Land Act (1991)"].

167 | Ibid. art. 1(1).

168 | Agricultural land was defined as "fields, gardens, orchards, vineyards, meadows, pastures, fisheries, sedgelands, and swamplands that are not particularly valuable biotopes, as well as other land that is used, or is not used, but can be cultivated for agricultural production." Agricultural Land Act (1991) article 2(1). "Other cultivable land" is a term that can be linked to the classifications set out in the Zakon o geodetskoj izmjeri i katastru zemljišta [Act on Geodetic Surveying and the Land Cadastre], Official Gazette 16/74, 10/78, 31/86, 47/1989, 51/89, 71/91, 26/93, 37/94, which was in force on July 24 1991, and which set out analyses for land classification. Therefore, in all instances, the land must be cultivable in order to be considered agricultural.

169 | Land registration courts would proceed to register the republic as owner, expunging social ownership and any quasi-ownership right-holder from the register. Applications would be supplemented by a certificate issued by the spatial planning authority certifying that the plot lay outside the area zoned for construction on July 24 1991. In 2005, the Ministry of Environmental Protection, Spatial Planning, and Construction issued a memorandum circular advising on the issuing of such certificates, and stating that the Agricultural Land Act effected a transformation of ownership such that all land that was located on that date outside the area zoned for construction, and was entered into the land register as socially owned, was transferred to the republic by operation of law, irrespective of who was entered as the user of said land. See Ministarstvo zaštite okoliša, prostornog uređenja i graditeljstva, Izdavanje uvjerenja o statusu zemljišta na temelju dokumentacije prostora u svrhu uknjižbe prava vlasništva Republike Hrvatske na poljoprivrednom zemljištu – uputa, kl. 940-01/05-01/00023, ur.br. 531-01-05-2 (December 23 2005). The certificate certified the location of the land in terms of the zoning regulation that was in force on July 24 1991. This mattered because ofas the provision of the Construction Land Act, and its predecessors, all of which defined construction land using a land use analysis, e.g., as all land located within cities, and urban settlements, as well as other developed land or land designated for the construction of buildings, or for public space. See Construction Land Act article 3. See Hrvoj-Šipek 2009, 189, 202.

The transformation of socially owned agricultural land meant that quasi-ownership rights holders lost such rights, without compensation,[170] and the value of agricultural land was subsequently not appraised in the transformation of socially owned enterprises that previously held such rights. In order to remedy the situation in the transitional period, Agricultural Land Act article 42 allowed socially owned legal persons who used agricultural land on the date the Agricultural Land Act came into force to continue such use until their transformation into a privately owned company.[171] The 1993 amendments added sections 2 and 3 to Article 42, which provided that the legal person established by way of transformation of a socially owned person must report to the Ministry of Agriculture and Forestry within 30 days after the completed transformation, for the purpose of regulating further use of such agricultural land.

The transformation of social ownership over agricultural land was designed to simply transfer the ownership to the state. The main reason for such a model was to conserve the vast amounts of such land for future restitution.[172] At the time this legislation was passed, there was no legislation on restitution, but it was obviously planned, as can be seen in Agricultural Land Act article 2(3) which explicitly states that "agricultural land taken from previous owners after May 15 1945 remains the property of the Republic of Croatia until the passing of the legislation on restitution and the return of agricultural land to previous owners."[173] Had there been no prior transformation, such land would ultimately end up owned by the legal successors of socially owned enterprises which transformed their quasi-ownership rights into ownership, and would have been unavailable for in-kind restitution.[174]

C. The Transformation Articles of the Ownership Act

The final provisions of the Ownership Act were designed to cover almost all socially owned land that was not covered by other (preceding) law, with some exceptions. It was passed relatively late, considering that all legislation and regulation had to be harmonised with the constitution no later than December 31 1997, pursuant to the Constitutional Act for the Operationalisation of the Constitution of

170 | See USRH (Constitutional Court of Croatia) Decision No. U-I-546/2000, at §6 (holding that such rights were not constitutionally protected rights under the new constitution, because they could not be equated with ownership). But see Kontrec 2014, 69, 85 (stating that the entire process was another nationalisation).

171 | See Agricultural Land Act (1991) art. 42.

172 | See Jelinić 1997, 37 – 54.

173 | See Agricultural Land Act (1991) art. 3(2).

174 | In many cases there was a subsequent attempt to claim agricultural land based on various transfers, including those in transformation proceedings of socially owned enterprises, however the Supreme Court had consistently held that no transfer was available after socially owned agricultural land became state-owned. See e.g. VSRH (Supreme Court of Croatia) decisions No. Rev 170/00, Gzz 85/05, Rev 1412/08, Rev 352/10, Rev 448/10, Rev 450/11, Revx 780/11, Rev 502/12, Rev 1725/12, Rev 1218/13, Rev 571/15, Rev 2272/18, Rev 1018/22.

the Republic of Croatia.[175] The general rule of transformation of rights of administration, use and disposition, was set out in article 360 of the Ownership Act, which provided that the right of administration, or use, and disposition over a socially owned thing had become by way of transformation of the holder of such right – ownership of the person that became by way of transformation the universal legal successor of the former holder of the right of administration, use, and disposition of the thing based on the transformation process, provided that the thing is capable of being owned. Further to that, entries in the land register and other public registers of the right of administration, use, and disposition entered before the date of entry into force of this Act shall be assumed to be entries of ownership.[176] The transformation articles cover the transformation of quasi-ownership rights of socially owned persons that were not covered by other (earlier) legislation, or restitution.[177] Therefore, they are not of particular relevance for agricultural land, as these transformations occurred prior to the passing of the Ownership Act, which didn't apply to such land.

IV. Restitution of Agricultural Land

The Restitution Act was passed in 1996, which was well over five years after socially owned agricultural land became state-owned.[178] During this period it was clear, however, that restitution was planned in some form, and this put a severe hold on any effective management of such agricultural land. But the passage of the Restitution Act was only the beginning of the restitution process, which meant that, now definitively, the future of previously socially owned agricultural land became uncertain. Restitution was not immediate, but required a legal (administrative) proceeding, initiated by eligible applicants. These were defined as natural and legal persons whose property has been taken under acts listed in articles 2 and 3 of the Restitution Act (which contains an exemplary list of 32 statutes and other acts), as well as their heirs[179] and legal successors.[180] The main principle was monetary compensation (cash compensation or compensation in the form of bonds or shares),[181] while in-kind compensation was an alternative, exceptional route. The reason for

175 | Ustavni zakon za provedbu Ustava Republike Hrvatske [Constitutional Act for the Operationalisation of the Constitution of the Republic of Croatia], Official Gazette 56/90, 8/91, 31/91, 33/91, 59/91, 27/92, 91/92, 62/93, 50/94, 105/95, 110/96.
176 | See Ownership Act (Official Gazette 91/96, 68/98, 137/99, 22/00, 73/00, 129/00, 114/01, 79/06, 141/06, 146/08, 38/09, 153/09, 143/12, 152/14, 81/15, 94/17) art. 360(4).
177 | See Ownership Act art. 359(2) (conditioning all acquisitions under the final provisions of the Ownership Act on Conformity with Restitutionary Rights).
178 | See generally Bagić, Šeparović & Žuvela 1997; Kačer 1997; Simonetti 2004.
179 | Eligible heirs were only descendants in the first order of succession. See Restitution Act art. 9.
180 | See Restitution Act art. 1(5).
181 | See Restitution Act art. 1(2). See Jelčić 1998, 483 – 504.

this was the protection of acquired rights, and public interest. The idea of 'righting a wrong' via restitution was dismissed by the Croatian Constitutional Court, holding that the legislator is free to decide which properties are to be returned or compensated, in what scope, and to which persons.[182] No violation of the constitutional protection of property was found, as property rights were extinguished prior to the entry into force of the Croatian Constitution, irrespective of the fact that social ownership was not recognised by it.[183]

Several major problems existed with respect to identifying eligibility, most of them caused by clouded titles at the time of the taking the land, due to incomplete land registration. Croatia has a history of land registration that dates back to the nineteenth century, when land registers were introduced in the Austrian Empire.[184] The system of land registers was kept in Croatia after the Second World War irrespective of the introduction of the socialist legal system. Land registration legislation in socialist Croatia, as well as other parts of the former SFRY, was the one passed in the Kingdom of Yugoslavia,[185] also modelled after the Austrian land registration system. The first Land Registration Act[186] after independence was passed in 1996 and came into force on January 1 1997. In 2019 a new Land Registration Act[187] was passed and has been in force since July 6 of that year. All of these acts closely followed original Austrian legislation. In the socialist period land registers served, to a certain degree, the purpose of publicising rights over real property even for socially owned real property. However, as the existing land registration rules were designed before the Second World War, they were inadequate for entries of social ownership; hence, special legislation and regulation was passed for that purpose.[188]

182 | See Constitutional Court of the Republic of Croatia, U-I-673/1996, Official Gazette 39/99.

183 | See ibid. The opinion was heavily criticised by some commentators who saw them as perpetuating the state that existed under social ownership and were thus contrary to the fundamental protection of ownership. See Simonetti 2009, 504 – 507.

184 | See Gruntovni red [Land Registration Order], Deržavno-zakonski list [Official Gazette of the Kingdom of Croatia] 222/1855 (Austrian Empire).

185 | Land Registration Act of 1930; Zakon o unutarnjem uređenju, osnivanju i ispravljanju zemljišnih knjiga [Act on Internal Organisation, Establishing, and Correcting Land Registers], Official Gazette of the Kingdom of Yugoslavia, 146/30; Zakon o zemljišnoknjižnim diobama, otpisima i pripisima [Act on Land Registration Partitions, Disjoinments, and Adjoinments, Official Gazette of the Kingdom of Yugoslavia, 161/30, Pravilnik za vođenje zemljišnih knjiga [Land Registration Rules], Official Gazette of the Kingdom of Yugoslavia, 64/31.

186 | Zakon o zemljišnim knjigama [Land Registration Act], Official Gazette 91/96, 68/98, 137/99, 114/01, 100/04, 107/07, 152/08, 126/10, 55/13, 60/13, 108/17.

187 | Zakon o zemljišnim knjigama [Land Registration Act], Official Gazette 63/19.

188 | See, e.g., Uredba o uknjiženju prava vlasništva na državnoj nepokretnoj imovini [Regulation on the Registration of Ownership Rights on State-owned Real Property], Official Gazette FNRY 58/47; Uputstvo za izvršenje Uredbe o uknjiženju prava vlasništva na državnoj nepokretnoj imovini [Instructions for the execution of the regulation on the Registration of Ownership Rights on State-owned Real Property], Official Gazette FNRY 10/49; Uputstvo o načinu upisivanja u zemljišnim knjigama prava vlasništva na zgradama izgrađenim na zemljištu općenarodne imovine [Instructions on the method of registering ownership rights over buildings built on the people's property in the land registers]; Uputstvo o zemljišnoknjižnim upisima nacionaliziranih najamnih zgrada i građevinskog

Socially owned real property and rights over such property held by socially owned legal persons were registerable in the land register under the Socially Owned Land Registration Act,[189] and the registration of each change of the rights holder was mandatory.[190] However, social ownership itself was almost always introduced via legislation, decrees, or judgments which were registerable, but took effect irrespective of registration, i.e. without it, and registration was merely declarative. Similarly, the transformation of rights and entitlements that took place during the various stages of development of social ownership was effectuated by operation of law. Actual entries of such transformations following the constitutional and legislative reforms that transformed these rights were merely declarative. Further to that, excluding transfers by deed, where land registration was always a requirement for the passing of title, in all other acquisitions, most importantly succession, confiscation, nationalisation, eminent domain, and the various methods of agrarian and land reform discussed above, title was passed automatically, independent of registration. Even after 1990, up to the passage of the Restitution Act, most transformations of social ownership occurred independent of registration. Many of these transfers, albeit registerable, went unrecorded, both pre- and post-1990, a major reason being the problem of a deteriorating congruence of cadastral and land registration data.[191] In cases where the land register was incomplete, both individuals and enterprises resorted to unrecorded sales and other contractual transfers, where recording was in fact a condition for the transfer of title, which made the situation even more complex.[192] These issues were also confronted in the context of intergenerational transfers. Where informal ownership was present at the time of death, estate proceedings could not formalise such ownership, so the problem stretched inter-generationally.[193]

The application of the Restitution Act meant that both applicants and the administrative authorities were faced with land registers that were rarely up to date and had to often tediously reconstruct all of the chains of title since the pre-war era through the socialist period in order to determine eligibility. Under

zemljišta [Instructions on land registration entries of nationalised rental buildings and construction land], Official Gazette FNRY 49/59; Uredba o postupku za sprovođenje nacionalizacije najamnih zgrada i građevinskog zemljišta [Regulation on the Implementation Process for the Nationalisation of Rental Buildings and Construction Land], Official Gazette FNRY 4/59, 53/60, 8/64, 7/65;

189 | Zakon o uknjižbi nekretnina u društvenom vlasništvu [Act on the Registration of Socially Owned Real Property]
Official Gazette SFRY 12/65.

190 | See ibid. art. 1.

191 | Land registration records are based and depend on cadastral data. Bottlenecks occurred when land registers had to be updated to match cadastral surveys. This process of establishing matching data on a mass scale was costly, time and labour intensive, and often never completed. Buildings were often left unrecorded because zoning and construction law barred recording of unpermitted buildings. See Ernst 2022, 495 – 564.

192 | See ibid.

193 | See ibid.

such circumstances, it is little wonder that some restitution proceedings are still pending to date.

The general rule for restitution of agricultural land was in-kind restitution, deviating from the general principle of monetary restitution.[194] This included both land and buildings built on such land at the time of taking,[195] if such land was still agricultural land at the time of restitution. This meant that agricultural land that was converted to construction land, or repurposed was not restituted as such, but was subject to the regime applicable to land use at the time of restitution. Consequently, normally in such cases no in-kind restitution was available due to third-party acquired rights.

The land returned was given in the state that it existed in at the time of restitution.[196] In case the value was increased, the former owner would have to compensate the difference to the current right-holder in cash or in kind (via co-ownership shares).[197] Conversely, the former owner had no right to damages of any kind.[198]

In-kind restitution of agricultural land was, however, also severely restricted in cases that were considered paramount and overriding. The Restitution Act provided various exceptions for various types of real property, such as those belonging to legal entities performing services in the areas of healthcare, social security, education, culture, science, energy, water management, sport and other public services.[199] Similarly, exceptions were provided for reasons of national security or defence,[200] for properties that are an indivisible part of a system of networks, buildings, equipment, or resources of public enterprises in areas of energy, utility, transportation, and forestry.[201] For agricultural land, two groups of exceptions can be identified. The first group concerned cases involving acquired rights. The general rule was that no in-kind restitution was available if third parties acquired ownership by way of a valid contract, or possession under a valid title for ownership

194 | See Restitution Act art. 20(1). The same rules applied to forests and forestland. Forests and forestland were governed by special legislation throughout the socialist period, and are still under a special regime today. See Opći zakon o šumama [General Act on Forests], Official Gazette FNRY 106/47, Zakon o šumama [Forests Act], Official Gazette SFRY 1/62, Osnovni Zakon o šumama [Basic Forests Act], Official Gazette SFRY 26/65, Zakon o šumama [Forests Act], Official Gazette SFRY 19/67, Zakon o šumama [Forests Act], Official Gazette 20/77, Zakon o šumama [Forests Act], Official Gazette 54/83, 32/87, 47/89, 41/90, 52/90, 5/91, 9/91, 61/91, 26/93, 76/93, 29/94, 76/99. 8/00, 13/02, 100/04, 160/04, Zakon o šumama [Forests Act], Official Gazette 140/05, 82/06, 129/08, 80/10, 124/10, 25/12, 68/12, 148/13, 94/14, Zakon o šumama [Forests Act], Official Gazette 68/18, 115/18, 98/19, 32/20, 145/20, 101/23, 145/23, 36/24. A detailed analysis of issues pertaining to forests and forestland is beyond the scope of this article.

195 | See Restitution Act art. 20(2).

196 | Restitution Act art. 49(1).

197 | Restitution Act art. 49(2).

198 | Restitution Act art. 51(1).

199 | See Restitution Act art. 54.

200 | See Restitution Act art. 1(3),

201 | See Restitution Act art. 55(1)(1).

acquisition.[202] These were, for example, cases where properties were first taken, and then allotted as part of the agrarian or land reform to third parties who acquired ownership over such land, or their successors who inherited or purchased such land. The second group involved cases where restitution would either materially compromise the spatial integrity or intended use of space and property,[203] or materially compromise the technological functionality of a compound (e.g. an industrial, agricultural, or forest compound wherein such land was included).[204]

In cases where in-kind restitution was not available, previous owners were entitled to restitution in other forma (securities).[205] Agricultural land was appraised in the proceedings under special regulation which classified such land into various classes.[206]

Another important issue, particularly relevant for agricultural land, was the prohibition of foreign acquisition of agricultural land under the Agricultural Land Act.[207] The Restitution Act had initially made foreign citizens ineligible for restitution, but these provisions were struck down by the Constitutional Court in 1999.[208] However, the bar on foreign ownership of agricultural land was introduced in 1993 by amendments,[209] i.e. before the Restitution Act, so foreign acquisition by way of in-kind restitution of agricultural land was barred irrespective of the constitutional requirement that restitution be applied equally to nationals and foreign citizens.

A particularly difficult problem was the one of restitution to the Catholic Church. This complex area is governed by several international treaties between Croatia and the Holy See,[210] and remains unresolved due to the uncertainties in

202 | See Restitution Act art. 52(1).
203 | See Restitution Act art. 55(1)(3). Examples include recreational and sports areas, as well as tourist campgrounds. Simonetti 2009, 567.
204 | See Restitution Act art. 55(1)(4).
205 | See Restitution Act art. 20(3).
206 | See Pravilnik o mjerilima za utvrđivanje vrijednosti oduzetog poljoprivrednog zemljišta, šuma i šumskog zemljišta [Ordinance on Criteria for Determining the Value of Confiscated Agricultural Land, Forests and Forestland] Official Gazette 58/98, 106/01; Pravilnik o mjerilima za utvrđivanje vrijednosti oduzetog poljoprivrednog zemljišta, šuma i šumskog zemljišta [Ordinance on Criteria for Determining the Value of Confiscated Agricultural Land, Forests and Forestland], Official Gazette 18/04.
207 | See Agricultural Land Act (1993 – after the amendments published in the Official Gazette 79/93), art. 1(3) (stating that foreign nationals cannot own agricultural land, nor can they acquire it by way of investing capital or purchasing a domestic legal person, unless otherwise provided by international treaty).
208 | See Constitutional Court of the Republic of Croatia, decision no. U-I-673/1996, Official Gazette 39/99.
209 | See Zakon o izmjenama i dopunama Zakona o poljoprivrednom zemljištu [Amendments to the Agricultural Land Act], Official Gazette 79/93, which did not apply to foreign citizens who had already acquired agricultural land before September 7, 1993 (art. 15).
210 | See Ugovor između Svete Stolice i Republike Hrvatske o suradnji na području odgoja i kulture [Treaty between the Holy See and the Republic of Croatia on Cooperation in the Area of Education and Culture], Official Gazette – International Treaties 2/97, Ugovor Svete Stolice i Republike Hrvatske o

their interpretation, the large amount of properties involved, as well as political considerations. For example, the treaty on economic issues guarantees that the Catholic Church will receive in-kind restitution for property taken during the socialist period that is available for restitution under 'the provisions of the law',[211] yet the Restitution Act which was passed prior to the signing of the Treaty excludes restitution in cases where issues are covered under an international treaty.[212] Another example concerns issues of legal successorship within the Catholic Church. In many instances there were internal transformations of legal entities within the Church during the socialist period, such that legal successors who claimed eligibility under canonical law were not eligible under the Restitution Act, because it excluded legal persons who did not continuously retain legal successorship, operations, and seat in Croatia.[213] Yet under the Treaty on legal issues, Croatia recognised the legal personhood of both the Catholic Church and its legal entities under canon law.[214] Finally, the treaty on economic issues guaranteed that the Church would receive restitution in the form of substitute properties for a "part of the properties that are unavailable for restitution"[215] and monetary compensation for "other property that will not be returned",[216] and all properties were to be listed by a joint commission composed of representatives of the Croatian Government and the Croatian Episcopal Conference, which has only met a few times in recent years and has not produced any meaningful results. A detailed analysis of these issues is beyond the scope of this article, but have been extensively discussed in the literature.[217]

Another unresolved issue was the property of land communes and similar communes and border property counties. As mentioned earlier, these were archaic property communes which existed since the 19th century. Their members lost special semi-feudal rights of use (*užitnička prava*) when this land was transferred to the people in 1947.[218] This land was not included in the restitution process, i.e. former right-holders were not eligible for any restitution. This exclusion has been heavily criticized in the literature,[219] and to date remains unresolved.

pravnim pitanjima [Treaty between the Holy See and the Republic of Croatia on Legal Issues], Official Gazette – International Treaties 3/97 [hereinafter: "Treaty on legal issues"]., Ugovor između Svete Stolice i Republike Hrvatske o gospodarskim pitanjima [Treaty between the Holy See and the Republic of Croatia on Economic Issues], Official Gazette – International Treaties 18/98 [hereinafter: "Treaty on economic issues"].

211 | See Treaty on Economic Issues, art. 2(1)(a), 3(1).

212 | See Restitution Act art. 10(1).

213 | See Restitution Act art. 12.

214 | See Treaty on legal issues, art. 2.

215 | See ibid. art. 2(1)(b), 4.

216 | See ibid. art. 2(1)(c), 5.

217 | See Mikulandra 2023; Petrak & Staničić 2020.

218 | See Zakon o proglašenju imovine zemljišnih i njima sličnih zajednica te krajiških imovnih općina općenarodnom imovinom (supra).

219 | See Simonetti 2009, 613 – 614; Koprić 2015, 545 – 557.

V. Privatisation of State-Owned Agricultural Land

The Agricultural Land Act initially did not contain provisions on the sale of agricultural land, but its article 3(3) allowed all foreign and domestic legal and natural persons to be granted a concession pursuant to the terms set out in another statute.[220] This section was repealed via an amendment in 1993.[221] The same amendment comprehensively regulated different modes of disposition over state-owned agricultural land. Except for land taken after May 15 1945 (which was supposed to remain available for restitution, as discussed above), it allowed sales,[222] gifts,[223] barter,[224] and concession.[225] It also legislated leases,[226] and gratuitous usufruct.[227] Concessions could be granted for the period of 10-40 years (depending on the purpose), for the purpose of farming, ranching, hunting, or fishing,[228] following a public tender.[229] Leases could be concluded for a period of 3-10 years[230] with no possibility of a sublease,[231] and also following a public tender.[232] Similar, but very

220 | See Agricultural Land Act (1991) art. 3 (defining 'concession' as a 'permission to use' agricultural land owned by the republic). Pursuant to the Transfer of Land Act art. 33, the state could only sell agricultural land to a legal person (not socially owned) in order to buy other agricultural land from that person, which was effectively a barter.
221 | See Zakon o izmjenama i dopunama Zakona o poljoprivrednom zemljištu, Official Gazette 79/93, article 2.
222 | See Agricultural Land Act art. 24m(1).
223 | Ibid. Gifts were later restricted in that all property transactions with land acquired by way of a gift were barred for a period of 10 years after the gift was given. Leases of donated land were allowed with the permission of the Ministry of Agriculture and Forestry. See Zakon o izmjenama i dopunama Zakona o poljoprivrednom zemljištu [Amendments to the Agricultural Land Act], Official Gazette 19/98, art. 6 (inserting Agricultural Land Act art. 40 sections 3 and 4). This restriction was repealed in 1998. See Zakon o izmjenama i dopunama Zakona o poljoprivrednom zemljištu [Amendments to the Agricultural Land Act], Official Gazette 105/99, art. 26.
224 | See Agricultural Land Act (1991 – after the amendments OG 79/93) art. 24m(1).
225 | See Agricultural Land Act (1991 – after the amendments OG 79/93) art. 24a-24g.
226 | See Agricultural Land Act (1991 – after the amendments OG 79/93) art. 12a.
227 | Gratuitous usufruct was only available to socially endangered Croatian citizens, who were participants of the Croatian War of Independence. See Agricultural Land Act (1991 – after the amendments OG 79/93) art. 24l(2).
228 | See Agricultural Land Act (1991 – after the amendments OG 79/93) art. 24b(1).
229 | See Agricultural Land Act (1991 – after the amendments OG 79/93) arts. 24(b)-24(d).
230 | See Agricultural Land Act (1991 – after the amendments OG 79/93) art. 24h(1).
231 | See Agricultural Land Act (1991 – after the amendments OG 79/93) art. 24h(3).
232 | See Agricultural Land Act (1991 – after the amendments OG 79/93) art. 24i. Leases were restrictive in that agricultural land that was not cultivated in the previous vegetative period could be forcibly leased out, while compensating the owner with the market value of such lease. See Agricultural Land Act art. 12a. Similar provisions on forced leases over privately owned agricultural land that was left uncultivated were introduced by amendment into the Agricultural Land Act of 2001 in 2005, see Amendments to the Agricultural Land Act, Official Gazette 48/05, and again in the Agricultural Land Act of 2008, see Agricultural Land Act 2008 art. 15 and 16, but the latter ones were ultimately struck down by the Constitutional Court as violating the constitutional protection of ownership. See Constitutional Court, decision no. U-I-763/2009 et al., March 30, 2011, Official Gazette 39/11.

detailed provisions were included in the Agricultural Land Act of 2001[233] (governing sales,[234] leases,[235] and concessions[236]), as well as in the Agricultural Land Act of 2008[237] (governing sales and leases,[238] long-term leases,[239] and fishpond concessions[240]), and the Agricultural Land Act of 2013[241] (governing leases,[242] temporary use,[243] barter,[244] sales,[245] and use).[246] [247] The current Agricultural land Act of 2018[248] also governs leases,[249] temporary use,[250] barter,[251] sales,[252] use,[253] as well as partition,[254] grants of building rights,[255] and easements.[256] In the period after accession to the EU, a particularly problematic issue was the one concerning acquisitions of agricultural land by EU nationals, discussed elsewhere.[257]

As previously mentioned, in the period between the transformation of social into state ownership over agricultural land and the resolution of restitution, earlier rights holders could remain in possession and use such land. This was a way of conserving agricultural productivity of the land, even though there was uncertainty as to its restitution. However, they had lost any rights they earlier held over such land, irrespective of the grounds on which they acquired such rights. This meant that even in cases where socially owned entities had purchased such land during the socialist period (as opposed to it have been granted), their rights were extinguished once the land became state-owned. In 2002, an amendment to the Agricultural Land Act attempted to better the position of the successors of earlier socially owned entities who purchased agricultural land from natural persons, by allowing them

233 | Agricultural Land Act, Official Gazette 66/01, 87/02, 48/05, 90/05 [hereinafter: "Agricultural Land Act (2001)"].
234 | See art. 23-28.
235 | See art. 29-42.
236 | See art. 43-46.
237 | See Agricultural Land Act, Official Gazette 152/08, 25/09, 153/09, 21/10, 90/10, 39/11, 63/11 [hereinafter: "Agricultural Land Act (2008)"].
238 | See arts. 32-53.
239 | See arts. 54-59.
240 | See arts. 60-70.
241 | See Agricultural Land Act, Official Gazette 39/13, 48/15.
242 | See arts. 27-47.
243 | See art. 48.
244 | See art. 49.
245 | See art. 50.
246 | See art. 51.
247 | See Kontrec 2014, 69 – 95; Brežanski 2011, 547 – 568.
248 | See Agricultural Land Act, Official Gazette 20/2018, 115/2018, 98/2019, 57/2022
249 | See arts. 31-56.
250 | See art. 57.
251 | See art. 58.
252 | See arts. 59-72.
253 | See art. 73.
254 | See art. 75-76.
255 | See arts. 77-79.
256 | See arts. 80-82a.
257 | See Josipović 2021, 100 – 122.

to apply for a priority concession without a public tender, if they proved that such land was in fact purchased.[258]

Agricultural land today is mostly owned by private farmers (70%), while the rest (30%) is still state-owned.[259] The government is still actively privatising agricultural land, although this process remains relatively slow.[260] Because the bulk of transactions involving state-owned agricultural land includes leases and not sales, it seems privatisation has not been entirely effective, and it will take further governmental action to fully achieve it.

VI. Conclusion

The collectivisation of agricultural land was a major post-war project, which was a fundamental part of destroying private property in the socialist legal system. The historical analysis presented demonstrates that this process was extremely complex. On the one hand, its complexity stemmed from existing, sometimes convoluted, legal regimes that were already present at the time the socialist legal regime was inaugurated. On the other hand, its complexity is a consequence of the changing policies during the socialist period. As presented above, we see that it is extremely difficult to discuss collectivisation in singular terms, because the development of social ownership was a consequence of changing ideological views on what social ownership entails. The Yugoslav system notoriously deviated from Soviet policies, and after the Tito-Stalin split started to develop a system based on the notion of self-management which grew into associated labour—a system unique to Yugoslav socialism. This meant that agricultural production was developed in a far more relaxed and market conscious fashion compared to that of the Soviet Union and Eastern European countries behind the Iron Curtain. The restitution process was slow and plagued by the remnants of the collectivisation process, mostly due to clouded titles and incomplete land registration.

Restitution of agricultural land was, unlike other land, based on the policy of in-kind restitution. This policy had the advantage of staying committed to the actual returning of previously taken land but had to be restricted for overriding public and economic interests, which in many cases resulted in only monetary restitution. The main drawback of this model was that it was designed by first essentially re-nationalising all socially owned agricultural land by transferring it into state ownership, and then administering long and complex proceedings

258 | See Agricultural Land Act 2001 art. 67 (2002). This option was only available until October 1 2002.
259 | Josipović 2021, 103.
260 | In the period between 2018-2022 about 11.5 K hectares were leased out, and about 485 hectares were sold. In 2022, out of 1M hectares of agricultural land used, a little over half was owned, and the rest was used under a lease, concession, or otherwise. See Republic of Croatia, Ministry of Agriculture, Forestry, and Fishing 2023, 24.

which required determining eligibility and appraisals. This effectively extended the entire process of privatisation, first during the period of pending legislation, and then again during the period of actual restitution proceedings, haunted by problems stemming from agrarian reform, land reform, social ownership, and dated land registers. The consequences of the application of this model are still present today. One of the major weaknesses in Croatian agriculture today remains the weak positioning of small agricultural farms in the agricultural network, and the government has identified that one important reason for this is the very small farmed area, recently reported at less than 5 hectares of farmed agricultural land for 70% of farmers.[261] This seems reminiscent of the land maximums set during the socialist period that haven't formally existed for well over 30 years. A significant amount of agricultural land is still state-owned, a significant amount of which is uncultivated, and its privatisation is still incomplete. The rules on privatisation, as seen above, were (and still are) in a state of constant flux, and the government is still searching for an optimal model. It is particularly interesting that one of the solutions the government puts forward today is an association of farmers, which is, once again, reminiscent of the associated labour policies under the socialist self-management regime.[262] At the same time, the government is painfully aware that farmers exhibit 'reluctance to association', which may have its roots precisely in the link between any association and associated labour, so it seems that the correct balance between collective and individual participation in agriculture remains to be found. We remain cautious, however, in assigning exclusive blame for the state of agricultural production today to the transformation and restitution processes over agricultural land, because in many instances, other factors, most importantly the Homeland War and the failed policies in the transformation and privatisation of socially owned enterprises, have significantly contributed to its deterioration. We remain hopeful that further land reform will live up to the challenges still present and bring an end to the restitution and privatisation of agricultural land in Croatia.

261 | Strategija poljoprivrede do 2030 [Agricultural Strategy until 2030], Official Gazette 26/22, par. 2.
262 | See Republic of Croatia, Ministry of Agriculture, Forestry, and Fishing 2024.

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