

István OLAJOS* – Ágnes JUHÁSZ**
**The relation between the land use register and the real estate registration
proceeding, with regard to the justification of the lawful land use*****

The real estate registration proceeding and the land use registration proceeding are two, usually consecutive proceedings. According to the agricultural and forestry lands, real estate registration proceeding is anticipated by an administrative procedure, within the observance of the provisions of the Act CXXII of 2013 on Transactions in Agricultural and Forestry Land (hereinafter TAFL) is examined.

As a result of our law of land transaction, some special problems may arise according to the land use within the agricultural supports. Such a case is, when the ownership expectant attempts to obtain supports based on his land use before the acquisition of the ownership right. In such case, the lawful land use is the prerequisite of the support. In this article, we intend to analyse, if public law expectancy existing between the time of the conclusion of the contract and the time of the ownership right's registration in the real estate register can establish the lawful land use, which serves as the base of the support legal relationship.

**1. The classic course of the transmission of ownership right according to
agricultural and forestry lands**

1.1. The procedure of the agricultural administration body

(a) In this administrative procedure, in the first place, the proceeding authority should examine, if there is such a cause which refers to the non-existence of the parties' agreement on the transmission or which would result the nullity of the transaction, since the transfer was contrary to law. In the first phase of its procedure, agricultural administration body controls the observance of the procedural rules on the practicing of pre-emptive rights. At the same time, it examines the accuracy of the statement, in which the user of the agricultural or forestry land declares that his land use is as his own.

István Olajos – Ágnes Juhász: The relation between the land use register and the real estate registration proceeding, with regard to the justification of the lawful land use – A mező-és erdőgazdasági földekre vonatkozó földhasználati nyilvántartás és az ingatlan-nyilvántartási eljárás viszonya a jogszerű földhasználat igazolása kérdésében. *Journal of Agricultural and Environmental Law* ISSN 1788-6171, 2018 Vol. XIII No. 24 pp. 164-193 doi: 10.21029/JAEL.2018.24.164

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After that, if the authority did not find any problem and, according to the legal provisions, should not deny the administrative acquiescence of the contract concluded by the parties, it determines the rank of those persons who made valid statement on their intention to practice the pre-emptive right. If the statement made by a person having pre-emption right is faulty, he shall be disregarded in the course of the determination of the pre-emption rank. If the contract does not contain an appropriate statement on the intention to practice the pre-emptive right, it shall be examined if a cause for the nullity or the non-existence of the contract occurs according to this deficiency.¹ The agricultural administrative body also shall examine the supporting statements made by the chamber. Such statements can be contested in a separate procedure.²

(b) In the second phase of the administrative procedure, agricultural administrative body duplicates the process of the chamber proceeded against the supported persons. Both the administrative decision designating the party entitled to conclude the contract and the approval about this act is to be placed on the contract sample are made at this time.³

¹ See Olajos István: The acquisition and the right of use of agricultural lands, in particular the developing Hungarian court practice, *Journal of Agricultural and Environmental Law (JAEL)*, 2017/23, 99-103, 112-116, doi: 10.21029/JAEL.2017.23.91

² Land transaction provisions on the local land committees are not entered into force in the lack of the executive acts. TAFL disposed to create the local land committees by settlements. However, TAFL stated that in such case, if the local land committees would not been created, their tasks should be done by the local bodies of the Hungarian Agrarian Chamber (HCA). The local bodies are determined by the statute of the HCA. The HCA's local body is the county presidency, which has its own organisation and has independent competency.

³ According to the Hungarian literature relating to the law of land transaction see Alvincz József: A földügyi szabályozás téves értelmezése, avagy hiteltelen írás a Hitelben, *Hitel*, 2013/6, 111-121; Andréka Tamás – Olajos István: A földforgalmi jogalkotás és jogalkalmazás végrehajtása kapcsán felmerült jogi problémák elemzése, *Magyar Jog*, 2017/7-8, 410-424; Anka Márton Tibor: Egymás ellen ható kodifikációk (Polgári Törvénykönyv és földforgalom), *Gazdaság és jog*, 2015/10, 13-19; Bányai Krisztina: A zsebszerződések ügyészi szemmel, *Új Magyar Közigazgatás*, 2014/1, 62-71; Bányai: A zsebszerződések a jogi környezet változásainak tükrében, *Studia Iurisprudentiae Doctorandorum Miskolciensium*, 2014/13, 7-33; Bányai: A földszerzés korlátozásának elméleti és gyakorlati kérdései Magyarországon, *JAEL*, 2016/20, 16-27, doi: 10.21029/JAEL.2016.20.5; Bányai: *A magyar mezőgazdasági föld tulajdoni és használati forgalmának jogi korlátai és azok kijátszása* (PhD Thesis) Miskolc, 2016; Bobvos Pál: A termőföldre vonatkozó elővásárlási jog szabályozása, *Acta Universitatis Szegediensis Acta Juridica et Politica*, 2004/3, 1-25; Bobvos Pál – Hegyes Péter: *Földjogi szabályozások*, JATEPress, Szeged, 2014; Bobvos Pál – Hegyes Péter: *A földforgalom és földhasználat alapintézményei*, SZTE ÁJK – JATE Press, Szeged, 2015; Bobvos Pál – Farkas Csamangó Erika – Hegyes Péter – Jani Péter: A mező- és erdőgazdasági földek alapjogi védelme, in: Balogh Elemér (edit.): *Számadás az Alaptörvényről*, Magyar Közlöny Lap- és Könyvkiadó, Budapest, 2016, 31-40; Burgerné Gimes Anna: Földhasználati és földbirtok-politika az Európai Unióban és néhány csatlakozó országba, *Közgazdasági Szemle*, 2003/9, 819-832; Csák Csilla: Die ungarische Regulierung der Eigentums- und Nutzungsverhältnisse des Ackerbodens nach dem Beitritt zur Europäischen Union, *JAEL*, 2010/9, 20-31; Csák: A termőföldet érintő jogi szabályozás alkotmányossági normakontrollja, in:

Csák Csilla (edit.): *Az európai földszabályozás aktuális kihívásai*, Novotni Alapítvány, Miskolc, 2010; Csák Csilla – Hornyák Zsófia: Az átalakuló mezőgazdasági földszabályozás, *Advocat*, 2013/1-4, 12-17; Csák – Hornyák: A földforgalmi törvény szabályaiba ütköző mezőgazdasági földekkel kapcsolatos szerződések jogkövetkezményei, *Őstermelő*, 2014/2, 10-11; Csák – Hornyák: Igényérvényesítés lehetőségei és határai a mezőgazdasági földforgalom körében – bírósági keretek, *Studia Iurisprudentiae Doctorandorum Miskolciensium*, 2014/14, 139-158; Csák Csilla – Nagy Zoltán: Regulation of Obligation of Use Regarding the Agricultural Land in Hungary, *Zbornik radova Pravnog fakulteta u Novom Sadu*, 2011/2, 541-549; Csák Csilla – Szilágyi János Ede: Legislative tendencies of land ownership acquisition in Hungary, *Agrarrecht Jahrbuch*, 2013, 215-233; Csák Csilla – Kocsis Bianka Enikő – Raisz Anikó: Agrárpolitikai – agrárjogi vektorok és indikátorok a mezőgazdasági birtokstruktúra szemszögéből, *JAEL*, 2015/19, 44-55; Fodor László: Kis hazai földjogi szemle 2010-ből, in: Csák (edit.): 2010, 115-130; Gyovai Márk – Kiss-Kondás Eszter: A mező- és erdőgazdasági földek árverés útján történő szerzésének szabályai, különös tekintettel a végrehajtási eljárásra, *JAEL*, 2016/20, 64-77, doi: 10.21029/JAEL.2016.20.50; Gyurán Ildikó: A földforgalmi törvény bírói gyakorlata, in: *A mező- és erdőgazdasági földek forgalmáról szóló 2013. évi CXXII. tv. gyakorlati alkalmazása* c. konferencián elhangzott előadás, Miskolci Törvényszék, 2016. október 14.; Hegyes Péter: Értelmezési és jogintézményi kérdések a termőföldre vonatkozó elővásárlási jog szabályozásával összefüggésben, in: Bobvos Pál (edit.): *Reformatio iuris kooperandi*, Pólay Elemér Alapítvány, Szeged, 2009, 199-207; Holló Klaudia – Hornyák Zsófia – Nagy Zoltán: Az agrárjog fejlődése Magyarországon 2013 és 2015 között, *JAEL*, 2015/19, 73-87; Hornyák: Grunderwerb in Ungarn und im österreichischen Land Vorarlberg, *JAEL*, 2014/17, 62-76; Hornyák: Die Voraussetzungen und die Beschränkungen des landwirtschaftlichen Grunderwerbes in rechtsvergleichender Analyse, *CEDR Journal of Rural Law*, 2015/1, 88-97; Hornyák: Földöröklési kérdések jogösszehasonlító elemzésben, in: Szabó Miklós (edit.): *Miskolci Egyetem Doktoranduszok Fóruma: ÁJK szekciókiadványa*, Miskolc, 2016, 131-135; Hornyák Zsófia – Prugberger Tamás: A föld öröklésének speciális szabályai, in: Juhász Ágnes (edit.): *Az új Ptk. öröklési jogi szabályai*, Novotni Alapítvány, Miskolc, 2016, 47-58; Keller Ágnes: A termőföld (mező- és erdőgazdasági földek) forgalmára vonatkozó új szabályozás ügyészi szemmel, *Ügyészek Lapja*, 2013/6, 191-198; Kocsis Bianka Enikő: Az új magyar földforgalmi szabályozás az uniós vizsgálat szemszögéből, *JAEL*, 2014/16, 111-127; Kocsis: A mező- és erdőgazdasági földek tulajdonjogának megszerzését vagy használatát korlátozó jogszabályi rendelkezések kijátszására irányuló jogügyletek és a naturalis obligatio kapcsolata, *Studia Iurisprudentiae Doctorandorum Miskolciensium*, 2015/16, 241-258; Korom Ágoston (edit.): *Az új magyar földforgalmi szabályozás az uniós jogban*, Nemzeti Közszerződések, Budapest, 2013, 11-166; Korom Ágoston – Gyenei Laura: The compensation for agricultural land confiscated by the Benes decrees in the light of free movement of capital, in: Lános Petra et al (edit.): *Hungarian Yearbook of International Law and European Law 2014*, Hague, Eleven International Publishing, 2015, 289-306; Kozma Ágota: Zsebszerződések veszélyei, *Magyar Jog*, 2012/6, 350-360; Kurucz Mihály: Gondolatok egy üzemszabályozási törvény indokoltságáról, *Gazdálkodás*, 2012/2, 118-130; Kurucz: Gondolatok a magyar földforgalmi törvény uniós feszültségpontjainak kérdéseiről, in: Szalma József (edit.): *A Magyar Tudomány Napja a Délvidéken 2014*, Újvidék, VMI, 2015, 120-173; Nagy Zoltán: A termőfölddel kapcsolatos szabályozás pénzügyi jogi aspektusai, in: Csák (edit.) 2010, 187-198; Roland Norer: General report Commission III – Scientific and practical development of rural law in the EU, in states and regions and in the WTO, in: Richli, Paul (coord.): *L'agriculture et les exigences du développement durable*, Paris, L'Harmattan, 2013, 367-387; Olajos István: A termőföldek használata az erdő- és mezőgazdasági földek forgalmáról szóló 2013. évi CXXII. törvény alapján, in: Korom (edit.) 2013, 121-135; Olajos: A mezőgazdasági földek tulajdonszerzéséhez

1.2. The steps of the real estate registration proceeding in the case of agricultural and forestry lands

(a) After that, the real estate registration procedure begins. The procedure's final result is a decision, upon which the transmission of the ownership right occurs.⁴

kapcsolódó eljárások (jegyző, helyi földbizottság), *Új Magyar Közigazgatás*, 2014/3, 53-55; Olajos: Az Alkotmánybíróság döntése a helyi földbizottságok szerepéről, döntéseiről, és az állásfoglalásuk indokainak megalapozottságáról, *Jogesetek Magyarázata*, 2015/3, 17-32; Olajos: Die Entscheidung des Verfassungsgerichts über die Rolle, die Entscheidungen und die Begründetheit der Gründen der Stellungnahmen der örtlichen Grundverkehrskommissionen, *Agrar- und Umweltrecht*, 2017/8, 284-291; Olajos István – Szilágyi Szabolcs: The most important changes in the field of agricultural law in Hungary between 2011 and 2013, *JAEL*, 2013/15, 101-102; Olajos: The acquisition and the right of use of agricultural lands, in particular the developing Hungarian court practice, *JAEL*, 2017/23, 91-116, doi: 10.21029/JAEL.2017.23.91; Orlovits Zsolt (edit.): Földforgalmi szabályozás, Budapest, Nemzeti Agrárgazdasági Kamara, 2015; Prugberger Tamás: Szempontok az új földtörvény vitaanyagának értékeléséhez és a földtörvény újra kodifikációjához, *Kapu*, 2012/6-7, 62-65; Papik Orsolya: „Trends and current issues regarding member state's room to maneuver of land trade” panel discussion, *JAEL*, 2017/22, 132-145, doi: 10.21029/JAEL.2017.22.132; Raisz Anikó: Földtulajdoni és földhasználati kérdések az emberi jogi bíróságok gyakorlatában, in: Csák (edit.) 2010, 241-253; Raisz: Topical issues of the Hungarian land-transfer law, *CEDR Journal of Rural Law*, 2017/1, 68-74; Raisz: A magyar földforgalom szabályozásának aktuális kérdéseiről, *Publicationes Universitatis Miskolcensis Sectio Juridica et Politica (PUMSJP)*, 2017/35, 434-443; Tanka Endre: Történelmi átlátnézet a magyar posztszocialista földviszonyok neoliberais diktátum szerinti átalakításáról, *Hitel*, 2013/1, 109-136; Téglási András: Az alapjogok hatása a magánjogi viszonyokban az Alkotmánybíróság gyakorlatában az Alaptörvény hatálybalépését követő első három évben, *Jogtudományi Közlöny*, 2015/3, 148-157; Szilágyi János Ede: European legislation and Hungarian law regime of transfer of agricultural and forestry lands, *JAEL*, 2017/23, 148-182, doi: 10.21029/JAEL.2017.23.148; Szilágyi: A magyar földforgalmi szabályozás új rezsimje és a határon átnyúló tulajdonszerzése, *Miskolci Jogi Szemle*, 2017/2, 69-577; Szilágyi János Ede: Rapport général de la Commission II, in: Roland Norer (edit.): *CAP Reform: Market Organisation and Rural Areas: Legal Framework and Implementation*, Nomos, Baden-Baden, 2017, 175-292; Szilágyi – Raisz – Kocsis: New dimensions of the Hungarian agricultural law in respect of food sovereignty, *JAEL*, 2017/22, 160-201, doi: 10.21029/JAEL.2017.22.160; Szilágyi: Acquisition of the ownership of agricultural lands in Hungary, taking the EU's and other countries' law into consideration, *Zbornik Radova Pravnih Fakulteta (Novi Sad)*, 2016/4, 1437-1451, doi: 10.5937/zrpfn50-12226; Szilágyi: Das landwirtschaftliche Grundstücksverkehrsgesetz als erster Teil der neuen ungarischen Ordnung betreffend landwirtschaftlichen Grundstücken, *Agrar- und Umweltrecht*, 2015/2, 44-50.

⁴ About the real estate registration procedure see Lugosi József: Az ingatlan tulajdonjoga adásvétel útján történő megszerzésének ingatlan-nyilvántartásba bejegyzése az ingatlan-nyilvántartási és a közigazgatási hatósági eljárás tükrében, *Magyar Jog*, 2010/2, 94-102; Boros Gizella: Ingatlan-nyilvántartási specialitások és a közigazgatási hatósági eljárás és szolgáltatás általános szabályairól szóló 2004. évi CXL. törvény (Ket.) összevetése, *Geodézia és Kartográfia*, 2009/4, 24-29; Süliné Tózsér Erzsébet: Az ingatlan tulajdonjogával kapcsolatos kötelmi és dologi jogi igények érvényesítése esetén az ingatlan-nyilvántartási eljárás szabta korlátok terjedelme, *Magyar Jog*, 2010/8, 479-487.

This legal act has constitutive effect, it means that at the end of this procedure the acquirer's ownership right becomes perfect. This procedure can be divided into three main phases.

The procedural elements of the first preparation phase are the formation of the contract between the parties, the lawyer's compulsory participation (which is based on either mandate contract or authorisation), the filling and the handing of the real estate register application.

If this phase takes place in the presence of the applicant or the representative in affair, a further (controlling) phase is inserted, which is pursued by the administrative officer of the authority. The officer controls the paying-in of the administrative procedural charges, the initiation of the priority processing and the certification of the conditions of the personal exemption. In the control part of the application it shall be indicated, if the control was pursued in the presence of the applicant. On the second page of the application the main data of the real estates involved in the procedure shall be indicated. These data play a significant role in the determination of the measure of the administrative procedural charge.

(b) In the first phase of the official procedure, the above mentioned controlling of the administrative officer and the handing of the application are entwined with each other. Most of the district land offices do not accept the application, if it is deficient or it contains not the appropriate measure of the administrative procedural charge. After the take-over of the application, the applicant indicated as client or the representative is to be notified about the starting of the procedure. Then, the application gets a reference number and the fact and the date of the starting of the procedure is to be recorded as index in the TAKARNET system.⁵ Thereafter, the second phase, the administrator's proceeding begins. After the signing, the extent of the administrator's measure is to be determined. It depends on the purchase price, since above a certain price the head of the department has control over the case. In other cases, the administrator adopts the decision according to the power for issuance facilities.⁶ Decisions from the district land office are always signed by the head of the office.

(c) First, the administrator examines, if there was a priority processing, the administrative procedural charge was paid in and the measure of the charge was appropriate. Moreover, the administrator examines, if (a) the applicant can be a client, (b) the applicant has civil law legal subjectivity or capacity to acquire, (c) the application and the document are compatible, and (d) the document complies with the provisions of the Hungarian Civil Code⁷, real estate, (e) register act⁸ and other sectoral act.

⁵ Dárdai Sándor: A széljegyzés elmulasztásának joghatálya, *Jogtudományi Közlöny*, 1876/31, 306. The omission of the index does not effect the order of rank of the arrangement, but can establish the liability for the actions of administrative authorities. See Legf. Bír. Kfv. IV. 37 226/2005, *Közigazgatási-Gazdasági Döntvénytár*, 2006/5, 26-28.

⁶ Takács József: A kiadmányozás és a főnöki ellenőrzés egyszerűsítése, 1948/3-4, 267-268; Pusztahelyi Réka: *Ingatlan-nyilvántartási jog*, Novotni Kiadó, Miskolc, 2014, 121-128.

⁷ Act V of 2013 on the Civil Code (HCC).

⁸ Act CXLI of 1997 on Real Estate Registration (RER).

In the course of this controlling procedure, the administrator shall review the list of the application and its enclosures. If the parties' contract does not require for the consent of the agricultural administrative body, the fulfilment of the formal requirements prescribed by the law of land transaction shall be examined and taken into account in the real estate registration procedure. Contrary to this, the above mentioned requirements shall not be examined, if the contract requires for the consent of the agricultural administrative body. In the case of such contracts, the real estate supervisory authority takes the approval made by the agricultural administrative body into account. If the application of interim measures (provision of additional information, abeyance or suspension of the proceeding) is not needed, the decision of first instance is born. The formal legal force of this decision generates the ownership right.⁹

1.3. The registration of the land use based on ownership right

After 2nd May 2014, the acquirer of the property can use his land upon his registered ownership right, if after the birth of the order on the registration he fills the land use registration form and initiates the registration of the acquired agricultural or forestry land to the land use register by virtue of ownership right.¹⁰

1.4. Summative remarks

(a) The above mentioned proceeding takes place, if parties agreed that the whole purchase price is to be paid only after the agricultural administrative body gives its consent to the contract and the accession of the land also takes place after this legal act of the authority. However, since the parties act according to the civil law provisions, in their contract they have to make clear, how the situation be handled, if original buyer paying advance is to be substituted by the person entitled for pre-emption. Contractual parties shall agree, if the paid advance shall be reimbursed to the original buyer by the seller or by the person entitled for pre-emption, who enters to the contract. According to the practicing of the pre-emptive right, this is a significant step, since it refers to the conditional effect of the contract. In our opinion, this is the reason why this provision should be essential in the contract.

(b) Contrary to this, classical sales contract has four essential elements: the seller and the buyer (i.e. the parties), the object of the sale, the price and the way of its paying. Thus, if the person of the buyer is marked as conditional by the text of the contract, the administrator of the land office, who follows a strict interpretation, would

⁹ Referring to the administrative practice of the Miskolc District Office, István Olajos summarized the administrator's proceeding. See Olajos István: *Mezőgazdasági nyilvántartások*, in: Szilágyi János Ede (edit.): *Agrárjog: A magyar agrár- és vidékfejlesztési jogi szabályozás lehetőségei a globalizálódó Európai Unióban*, Miskolc, Miskolci Egyetemi Kiadó, 2017, 168-188. Hereinafter referred as Olajos (2017).

¹⁰ See Pusztahelyi Réka: *Földhasználati nyilvántartás* in: *Ingatlan-nyilvántartási jog*, Miskolc, Novotni Kiadó, 2014, 117-120. and Olajos 2017, 178-183.

reject the application without the provision of additional information, because the contract is contrary to the provisions of the HCC on the sales contract. For this reason, not only the enclosure of the original, with an approval inserted contract is needed, but the lawyer shall duly designate the person of the seller, in order to the successfulness of the real estate registration proceeding.

(c) Nevertheless, the buyer's statement, in which he declares that he uses the acquired land according to the it's land use destination and as his own, is also an essential element of the contract. In this case, the person acquiring a land more than one hectare is also agricultural producer, who can independently pursue his activity, because it is ensured by either his qualification or his turnover originating agricultural activity.

A land use is independent, if the owner gives the land to use upon either of the legal titles recognised by the TAFL, to either a company owned by him at least in 25 percent or to one of his close relatives.¹¹

Thus, after May 2014, the land shall be given to regulatory use,¹² if the owner gives his land to the use of a third person beyond the above listed persons and this is to be revealed during the control of the owner's acquisition. Therefore, the land use based

¹¹ About the interpretation of the acquirer party see Csák Csilla – Hornyák Zsófia: Az átalakuló mezőgazdasági földszabályozás, *Advocat*, 2013/1-4, 12-17; Csák Csilla – Hornyák Zsófia: A földforgalmi törvény szabályaiba ütköző mezőgazdasági földekkel kapcsolatos szerződések jogkövetkezmenyei, *Őstermelő*, 2014/2, 10-11; Csák Csilla – Hornyák Zsófia: Igényérvényesítés lehetőségei és határai a mezőgazdasági földforgalom körében – bírósági keretek, *Studia Iurisprudentiae Doctorandorum Miskolciensium*, 2014/14, 139-158; Csák Csilla – Nagy Zoltán: Regulation of Obligation of Use Regarding the Agricultural Land in Hungary, *Zbornik radova Pravnog fakulteta u Novom Sadu*, 2011/2, 541-549; Csák Csilla – Szilágyi János Ede: Legislative tendencies of land ownership acquisition in Hungary, *Agrarrecht Jahrbuch*, 2013, 215-233; Csák Csilla – Kocsis Bianka Enikő – Raisz Anikó: Agrárpolitikai – agrárjogi vektorok és indikátorok a mezőgazdasági birtokstruktúra szemszögéből, *JAEL*, 2015/19, 44-55; Raisz Anikó: Topical issues of the Hungarian land-transfer law, *CEDR Journal of Rural Law*, 2017/1, 68-74; Raisz Anikó: A magyar földforgalom szabályozásának aktuális kérdéseiről, *Publicationes Universitatis Miskolcensis Sectio Juridica et Politica*, 2017/35, 434-443; Szilágyi János Ede: Rapport général de la Commission II, in: Roland Norer (szerk.): *CAP Reform: Market Organisation and Rural Areas: Legal Framework and Implementation*, Baden-Baden, Nomos, 2017, 175-292; Szilágyi János Ede – Raisz Anikó – Kocsis Bianka Enikő: New dimensions of the Hungarian agricultural law in respect of food sovereignty, *JAEL*, 2017/22, 160-201, doi: 10.21029/JAEL.2017.22.160; Szilágyi János Ede: Acquisition of the ownership of agricultural lands in Hungary, taking the EU's and other countries' law into consideration, *Zbornik Radova Pravni Fakultet (Novi Sad)*, 2016/4, 1437-1451, doi: 10.5937/zrpfns50-12226; Szilágyi János Ede: Das landwirtschaftliche Grundstückverkehrsgesetz als erster Teil der neuen ungarischen Ordnung betreffend landwirtschaftlichen Grundstücken, *Agrar- und Umweltrecht*, 2015/2, 44-50.

¹² Hornyák Zsófia: A magyar földforgalmi rezsim előírásainak ellenőrzési és szankcionálási rendszere, in: Szilágyi János Ede (edit.) *Agrárjog: A magyar agrár- és vidékfejlesztési jogi szabályozás lehetőségei a globalizálódó Európai Unióban*, Miskolci Egyetemi Kiadó, Miskolc, 2017, 109-117.

on ownership right or having unremunerated nature became determinant in the practice.¹³

2. When the acquisition of the ownership right is anticipated by the registration of the land use

In the Hungarian law of land transactions, several cases occur, in which the former owner, who intends to fully give up the land use, cannot wait for the buyer's real fulfilment until the procedure of the agricultural administrative body ends. In this case, such a situation can emerge, where the buyers purchase the seller's whole land and the object of the agricultural holding will be the object of the sales contract. As the elements of the agricultural holding, not only the agricultural or forestry land, but the residential and farmer buildings laying on the land and keeping an independent real estate shall be transferred. Movable to be transferred are the machines and their belongings, which are necessary to the pursuance of the production and the whole livestock relating to the farming and registered as independent supporting unit.

Moreover, those rights having pecuniary value, which are necessary to the pursuance of certain activities and ensure production-independent support, also can be deemed as an object of the sales contract. Similarly, an object of the sales contract can be such a supporting entitlement, which requires for a several years' use and where the interruption of the production work can lead to the reclaiming of the already paid supports. This kind of sale, i.e. when the land is to be transferred as a whole collection of things (*universitas rerum*) has already been examined by the jurisprudence.¹⁴ Nevertheless, in our law of land transaction there is not a uniform standing point according to this question and the adjudication of the contract arises problems in several cases.

The related provisions of the TAFLL regulates only that case, when the purchase of different agricultural and forestry lands are implied in the same sales contract. In such case, in the course of the adjudication of the total (together-counted) purchase

¹³ See Olajos István: A földforgalomhoz kapcsolódó szerződések anyagi és eljárási kérdései, *Publicationes Universitatis Miskolciensis Series Juridica et Politica*, 2017/1, 381-392.

¹⁴ Kurucz Mihály: A mezei leltár mint a mezőgazdasági tevékenységgel összefüggő befejezetlen termelés költségei érvényesítésének kérdései a mező-, erdőgazdasági hasznosítású földek forgalmának és használatának új közjogi korlátozási rendszerében, in: Gellén Klára (edit.): *Honori et virtuti: Ünnepi tanulmányok Bobvos Pál 65. születésnapjára*, Szeged, Iurisperitus Bt., 2017, 268-294; Tanka Endre: Mezőgazdasági üzemtörvény a föld nemzeti önvédelmére *Hitel*, 2014/11, 105-128; Kurucz Mihály: Az ún. agrárüzem-szabályozás tárgyának többféle modellje és annak alapjai, in: Korom Ágoston (edit.): *Az új magyar földforgalmi szabályozás az uniós jogban: Budapest, 2013. júli. 11-én azonos címmel rendezett konferencia szerkesztett előadásai*, Budapest, Nemzeti Közszerződések Alapítvány, 2013, 56-76; Kurucz Mihály: Gondolatok egy üzemszabályozási törvény indokoltságáról, *Gazdálkodás*, 2012/2, 118-136; Orlovits Zsolt: A mezőgazdasági üzem fogalmának agrárjogi értelmezése, *Gazdálkodás*, 2008/4, 368-374; Mikó Zoltán: Új agrárjogi alapfogalmak: a mezőgazdasági termelő, a mezőgazdasági üzem *Gazdaság és Jog*, 2004/12, 21-24; Süveges Márta: A földtulajdon és a mezőgazdasági üzem jogi szabályozása az olasz jogban, *A budapesti Eötvös Loránd Tudományegyetem Állam- és Jogtudományi Karának actái*, 1990/1, 97-129.

price, the agricultural administrative body only gives its consent, if the lands are neighbouring or they can be reached from the same centre of agricultural operations. However, the mentioned condition fulfils in this case, since the parties transfer the farm's whole substance as a whole collection of things (*universitas rerum*) to ensure the undisturbed proceeding of the agricultural activity. Nevertheless, the lead-time is allowed and realistic in the pursuing of certain plant production, but it is not realistic, if the farm's new owner is obliged to do for the supply of the whole live-stock from the time of the entering into the possession of the farm. In such case the legal act of the transmission and the entering into possession is fully separated. Moreover, the submission of the application for land-based supports can also not be postponed until the time, when the new owner is to be registered in the real estate registration by the real estate supervisory authority.

Hereinafter, through an example, we intend to picture the statics and dynamics of the ownership and use contracts of agricultural and forestry lands. Besides this, using the work of Gyula Eörsi¹⁵ on the questions of the transfer of the ownership, we attempt to follow up which person is entitled to enforce the supporting rights, which relate to the land-use and have pecuniary value.

2.1. Transfer of land as a whole collection of things (*universitas rerum*). An example

In our case, the retiring owner sold his lands and other immovable, rights with pecuniary value and live-stock implied in the same contract. He concluded a share farming contract¹⁶, within he disposed about the upkeeping of the land-relating stock. The contract also covered both the supports related to and separated from the production. The production-related supports of the multiparty contract were available only for the landlord, i.e. the person registered as owner, who carried both the risks originating the supports applications missed and the profit lost because of these applications.

The parties stipulated in the contract that the change of the parties does not concern the effect of the contract, if its amendment is to be made in an appropriate form. Before the signing of the sales contract, the previous owner informed the parties

¹⁵ Eörsi Gyula: *A tulajdonátzállás kérdéséről*, Légrádi Testvérek Rt., Budapest, 1947. Hereinafter referred to as Eörsi (1947).

¹⁶ About the delimitation of the contract types see Bobvos Pál: A földhaszonbérlet, a felesbérlet és a részesművelés szabályozása, *Acta Universitatis Szegediensis: Acta juridica et politica*, 2002/1-26, 55-79; Olajos István: *A részesművelési szerződés gyakorlati problémái – megjegyzések egy részesművelési szerződés tervezete kapcsán* szakvélemény (31.08.2012.); Olajos István: A megújuló energiával működtetett távhő rendszerek kialakításának földhasználati és társasági jogi alapkérdései, in: Raisz Anikó (edit.) *A nemzetközi környezetjog aktuális kihívásai*, Miskolci Egyetem, Miskolc, 2012, 129-137; Olajos István: A kistelepeleken létrejövő távhő és termeltetési rendszerek energiaügyi problémái, *Magyar Energetika*, 2012/6, 22-27.

to share-farming about his withdrawing from the contract and proposed to involve his legal successor to the share farming contract as landlord.¹⁷

The contracting parties agreed in the amendment of the contract. Since the amendment of the use contract did not concern nor the duration of the contract, neither the amount of the usage fee. Besides this, the contract did not require for the consent of the authority, therefore the competent authority of land affairs, which keeps the land use register, registered the amendment of the contract in 8 days after its notification.

However, the approval of the sales contract lasted for much longer, since the contract conclusion was followed by a three-months-long proceeding, in which the entitled persons practiced their pre-emption rights.¹⁸ As the object of the sales contract was a whole collection of things, the together-counted purchase price was so high that parties were sure that none of the entitled persons of pre-emption right would come forward. Nevertheless, the disparity in value did not arise as question in the course of the proceeding of the chamber, because the object of the sales contract was a whole collection of things. Therefore, the parties agreed that the buyer pays the complete purchase price, while the seller gives his consent to the registration of the involved real estates at the time of the contract conclusion and gives the possession of the movable and immovable assets involved in the contract to the buyer's possession and transfer

¹⁷ If the share farming contract does not lead to the cultivation of the land, the contract is contrary to Article 13 of the TAFL, which can arise the (public) invalidity of the contract. Therefore, the existing share farming contract and the statement of the buyer shall be compared in the course of the proceeding of the agricultural administrative body.

¹⁸ In the case of agricultural and forestry lands, the pre-emptive right has special rules. About this question see Leszkoven László: A termőföldet érintő elővásárlási jog egyes kérdései. *Publicationes Universitatis Miskolcensis, Sectio Juridica et Politica*, 2004/1, 393-403; Bobvos Pál: A termőföldre vonatkozó elővásárlási jog szabályozása, *Acta Universitatis Szegediensis, Acta juridica et po-litica*, 2014/3, 3-25; Szilágyi János Ede: A termőföldek törvényes elővásárlási jogának alakulásáról, különös tekintettel a rendszerváltás utáni jogfejlődésre, *Publicationes Uni-versitatis Miskolcensis, Sectio Juridica et Politica*, 2005/2, 511-525; Kurucz Mihály: A magánjogi dogmatika alkalmazásának joggyakorlati jelentőségéhez: az elővásárlási jog gyakorlása és az ingatlan-nyilvántartási bejegyzési engedély szolgáltatásának ügyleti összefüggése, *Közjegyzők közlönye*, 2007/11, 3-14; Pusztahelyi Réka: Az elővásárlási jog egyes kérdései a bírói gyakorlatban, *Miskolci Jogi Szemle*, 2009/2, 96-111; Holló Klaudia: Az elővásárlási jogról, mint a földforgalom korlátozásának közvetett eszközéről, *Themis*, 2014/6, 42-59; Juhász Judit: Az elővásárlási jog gyakorlása általában, és a termőföld értékesítése során: konferencia beszámoló, *Advocat*, 2017/1-2, 26-29; Olajos István: Az elővásárlási és elő-haszonbérleti jog gyakorlásának speciális szabályai a földforgalomban, in: Barzó Tímea – Juhász Ágnes – Leszkoven László – Pusztahelyi Réka (edit.): *Ünnepi tanulmányok Bíró György professzor 60. születésnapjára*, Novotni Alapítvány a Magánjog Fejlesztéséért, Miskolc, 2015, 375-386; Hegyes Péter: Értelmezési és jogintézményi kérdések a termőföldre vonatkozó elővásárlási jog szabályozásával összefüggésben, in: Bobvos Pál (edit.): *Reformator iuris cooperandi – Tanulmányok Veres József 80. születésnapja tiszteletére*, Pólay Elemér Alapítvány, Szeged, 2009; Hornyák Zsófia: Az elővásárlási jog megítélése, mint a tulajdonjog lehetséges korlátozása az alkotmánybíróság szemszögéből, *Studia Iurisprudentiae Doctorandorum Miskolciensium*, 2014/1, 91-110; Bányai Krisztina: Theoretical and practical issues of restraints of land acquisition in Hungary, *JAEL*, 2016/20, 5-27, doi: 10.21029/JAEL.2016.20.5

the facilities of beneficial enjoyment. According to the agricultural land in the given case, both the real giving into possession and the consent to registration were made at the end of April 2014, but the pre-emption prior to the proceeding of the agricultural administrative body finished only at the beginning of July. The acquisition of the original buyer was allowed by the agricultural administrative body only on 30th September 2014. Nevertheless, in June 2014, the buyer applied for land-based support for the financial year 2014 upon the share farming contract, which was concluded and registered during that time. Since the buyer was not owner at the time of the application, the body in charge of agricultural and regional development aid refused the application with reference to the lack of valid legal title. It is a question, if the person who entered into possession but still not have ownership right shall be deemed as lawful land user according to the effective land use rules. It also should be answered, if such person is entitled to apply for land-based support.

2.2. Transmission of the ownership in the above mentioned case

In its relating work, Gyula Eörsi considered this process as a static and dynamic unit, where the ownership-wise possession keeps the static status. According to this, the owner recognised by law has the right of use, the right of beneficial enjoyment and the right to dispose over property. By this latter the owner can transfer either his ownership as a whole or any partial right of his ownership.¹⁹ In the case of immovable, the authenticity of the real estate registration enhances the statics of the ownership right, since the real estate registration records shall be construed as authentic proof of registered rights and recorded facts, unless proved otherwise.²⁰

According to the dynamics of the ownership, Eörsi examined two big fields, after he stated that the ownership right has 'intern effect', since the ownership is regulated only by the parties' agreement and the law is not allowed to encroach nor direct, neither indirect way into the questions of the transmission of the risk, transmission of the right to dispose over property and the right to vindicate. Contrary to this, the cogent provisions of the law prevail and result the 'extern effect' of the priority time, the termination of the claims of the creditors of the person transferring ownership right of the land and the opening of the claims of the creditors of the acquiring parties.

¹⁹ See Eörsi 1947, 12-17.

²⁰ About the practical problems of the principle of authenticity see Petrik Ferenc: A telekkönyvi jog alapelvei, a közhitelesség elve, *Magyar Jog*, 2003/5, 257-264; Kurucz Mihály: A nyilvánkönyvi közhitelesség tartalmának sokrétűségéről, *Acta Facultatis Politico-iuridicae Universitatis Scientiarum Budapestinensis de Rolando Eötvös Nominatae*, 2003/40, 291-318; Kurucz Mihály: A nyilvánkönyvi közhitelesség tartalmának sokrétűségéről, *Magyar Jog*, 2004/6, 321-332; Kurucz Mihály: A jogorvoslatok és a közhitelesség összefüggése a telekkönyvi rendtartásban, *Jogtudományi Közlöny*, 2007/4, 173-182; Kurucz Mihály: A jogerőhatás és a közhitelesség jogvédelmi hatásainak kollíziója az 1997. évi CXLI. tv. által szabályozott ingatlan-nyilvántartásban, *Magyar Jog*, 2007/8, 458-468.

Thus, parties are fully free to decide that who and from which time is obliged to carry the risk originated from the thing. Although the parties may depart, as a main rule, the carrying of risk transfers at the time of the transmission of the movable thing or the entering into possession in the case of immovable. This rule was confirmed many times by Eörsi.²¹ In our case, the buyer is obliged to carry the risk in any case, since the time of the taking of the possession does not differ from the time of the contract conclusion.

Nevertheless, the right to dispose over the property is more complex. Some elements of this right can transfer by the entering into possession. Such element is the right of use and its transfer to third person. However, according to the 'nemo plus iuris' principle, the right to dispose on the whole can only be transferred at the time of the transmission of the whole ownership right.

The right to vindicate was also analysed by Eörsi through many examples. By this right the seller or the buyer can claim back the thing, if after the real transmission of the thing it gets out of the possession of either of them by virtue of a third person's act. The transmission of this right also based on the parties' agreement. Eörsi took the contractual parties' common interests into account and stated that the most practical is, if the seller becomes entitled to practice the right to vindicate from his entering into possession, while the seller stays also entitled until the last momentum of the transfer of ownership, i.e. until the registration of the ownership right in the real estate register. Thus, in this phase of the proceeding, both of the contractual parties are entitled to practice the right to vindicate. Nevertheless, the most practical is, if the right is practiced by the party who first observes the third person's unlawful and their interests harming possession.

Among the acquisitions with extern effect, priority time has significance, since in our case the existence of any claim of creditor against the seller or the buyer is not known. Eörsi demonstrates the priority by the comparison of the buyer, who concluded the contract with the seller, but did not enter into possession and the second buyer, who acquired the possession indeed, but has no legal title for the possession and did not pay the purchase price to the seller.

In our case, the buyer did not enter into possession, but he acquired the right to vindicate after the conclusion of the contract. The second buyer was already in possession. His possession is lawful, since he acquired the possession of the real estate from the seller. Since the buyer has the right to vindicate, he is entitled to acquire the possession by legal way, i.e. either by protection of possession or action for possession (*actio in rem*). In this latter case, the strength of the legal titles is relevant. As the buyer paid the purchase price and the second seller hold the possession without paying, after the comparing of the legal titles it becomes evident that the entering into possession of the party acquiring for valuable consideration will be lawful.

In the case of immovable, the priority as an external shaping fact prevails in the real estate registration, even if the rights relating to the integrity of the ownership right do not. In this regard, indexing, provisional entry, advance provision of a ranking and the maintaining of ranking are fact to be recorded on its own. Accordingly, the nature of

²¹ Eörsi 1947, 42-45.

the possibility to enforce a later nascent right becomes right in rem. In the case of such recognised facts, good faith and bad faith of the acquirer shall not be examined, since the authenticity of the real estate register substitutes it.²²

In our example, the expectant, who entered into possession, but not acquired ownership is forward in the priority sequencing the owner, who paid the purchased price and has the right to dispose over property. Thus, except the right to dispose over property, expectant has the right to use and the right of beneficial enjoyment. Moreover, excluding the transmission, expectant can practice the right to dispose over property, since he has the right to vindicate against third persons and this right of him is stranger than the original owner's. If the share farming contract is valid, all parties nominated in the contract are excluded by the parties, i.e. only the expectant has the right to submit the application for support.

2.3. Can the 'public law expectancy' be deemed as a circumstance, which bases the lawful land use?

'Public law expectancy' is a situation, which is prior to the 'registration expectancy' created and characterized by Mihály Kurucz. At the beginning of his previously work Kurucz defines that *"the expectancy is a legal situation, which is not the same, but, because of the required successive elements of the state of affairs, similar to the acquisition of a right. It can be deemed as a single stair of the acquisition of the right, which has single legal effects. The expectancy is not a right, but a situation having pecuniary value and legal defence as a subject matter."*²³

Summing up his dogmatic analysis, Kurucz states that *"the 'registration expectancy' inevitably requires the contractual parties' statements on the transfer of the right, which statements should be perfect in each element of them. The perfection of the successive state of affairs depends on the conduct of the acquirer (e.g. buyer)."*²⁴ Compared with this, 'public law expectancy' is a prior status, where parties agreed in the transfer of the ownership and the buyer entered into possession, but his acquisition is conditional, since the original document needs to be issued by the approval of the agricultural administrative body. In the case of the 'public law expectancy', the right of use and the right of beneficial enjoyment prevails according to the classical civil law dogmatic, previously analysed by Eörsi. Accordingly, the 'public law expectant' carries the risk of damages and his priority to claim, i.e. the right to vindicate, is stronger compared to the similar right of the seller's.

Thus, the public law status of the 'public law expectancy', which is built upon the provisions of the TAFIL, is special. Article 38 (1) of the TAFIL contains the

²² Eörsi 1946, 78-82.

²³ „A váromány a jog megszerzésével nem azonos, de az egymást követően beálló tényállási elemek teljesülése folytán abhoz közel álló, a megszerzési pozíció önálló joghatásokkal bíró lépésőfokaként elő álló jogi helyzet. A váromány jogvédelemi tartalmú vagyoni értékű jogi helyzet, de nem jog.” See Kurucz 2016, 5., first section.

²⁴ See Kurucz 2016, 16.

exhaustive enumeration of the recognised legal titles of the contract.²⁵ Since the enumeration does not contain the ‘public law expectancy’ as a recognised legal title, the ‘public law expectant’ are not entitled to use the land. Nevertheless, if the expectant confirms his usage by a share farming contract, as we mentioned before, it shall be examined, if he is entitled to dispose with the right of use acquired by him, before the acquisition of the ownership right. The right to dispose over the property can extend to the transfer of the already acquired partial right, therefore the public law expectant can be in the position of the landlord, provided that he has already entered into the possession of the land.

This legal standing point would also prevail, if the share farming contract would be concluded after the formation of the ‘public law expectancy’. The expectancy’s transitional nature is also an important question; therefore, the use contract should refer to the fact that the present form of the contract exists until the expectant becomes owner or the expectancy terminates by virtue of the agricultural administrative body’s negative decision.

2.4. The criteria of the lawful land use in the support procedure

The last question to be examine is, if the public law expectant, who became the party of the share farming contract on the legal title of change of subject, is a lawful land user or not from the viewpoint of the support rules. To answer this question, the provisions of the Act XVII of 2007 on the General Requirements of Agricultural Supports (hereinafter referred to as GRAS).

According to the Article 44 (7) of the GRAS, the conditions of the lawful land use are the followings.

A lawful user shall mean as the following ranking the customer, who or what, expect as regulations on supports provide about this date otherwise, referring to the last day of the deadline for the submission of the application and related to the requested areas (a) was registered as a land user in the Land Use Register; (b) was registered as a family farmer in the registration of family farmers or has an agreement on the establishment of a family farmer and he/she is in it as a family farmer; (c) the lease, leasehold, bargaining, charity land use, recreational purposes land use and sublet contract, furthermore, according to the Article 70 and 76 of the Act CCXII of 2013 on the Provisions and Temporary Rules of Act CXXII of 2013 on the Transactions in Agricultural and Forestry Land (hereinafter referred to as TR), the agreement on land

²⁵ These, by the TAFI recognised, legal titles are the followings: leasehold, share-cropping, share-farming or gratuitous land use, or recreational land use and sub-leasehold regulated in Article 65 of the TR. Among the ‘owner-wise usages’, ownership right, using of joint property upon shared use agreement, administrative drawing report and the use of self-government property are determined by the land use deed as the legal titles of the land use. Public employment, social land program and other titles determined by the Act LXXXVII of 2012 on the National Land Reserves, upon which state property can be used, are further possible legal titles for the using. The exhaustive nature of the legal titles determined by the TAFI is refuted by the practice.

use rules, the mandatory contract based on the Article 18 (5) of the Act LXXXVII of 2010 on National Land Fund (including a contract concluded by a National Park Directorate), as well as a land user based on the temporary order of the court and who is entitled to use the defence area based on a contract; (d) who is registered as a Trustee, Beneficiary in the Real Property Registration or the user of the right of use based on the Article 5:159 of the Act V of 2013 on Civil Code Section, and who is qualified as the successor of the budgetary body registered as a trustee; (e) who is registered as an owner or a cooperative land-use holder in the real property registration; (f) in case of Article 42 (2) Point c) of the Act CXXII of 2013 on the Transactions in Agricultural and Forestry Land the person, who has got a written agreement concluded with the land user registered in the land register; (g) the joint owner on the undivided common property, on the area in excess of his share of ownership, in relation of the area in excess of his share of ownership, if he has not been registered to the land use register through no fault of his/her own and has the written agreement, which entitles to the use of the proportion of the area and the fact of usage is supported by his management logbook; (h) the person on the undivided common property who is not qualified as joint owner, if he/she has not been registered to the land use register through no fault of his/her own and has the written agreement, which entitles to the use of the proportion of the area and the fact of usage is supported by his management logbook; (i) the close relative of land user within the meaning of the points a)-h) (j) who has the certificate issued by the notary in the deadline for submitting an application and certified the fact of the use of the land.

Answering the above question, it shall be stated that according to Article 44 (1) Point a) of the GRAS, Article 67 (4) of the TR declares that in the case, if the land gets into the common use of the contracting parties on the ground of the share farming contract, each of the parties to share-farming is entitled to use the whole, in the using unshared land, i.e. all of them are land user. Moreover, from the viewpoint of the supports, the party of the existing share farming contract, who is not registered yet, shall also be deemed as lawful land user. Thus, in virtue of the former argumentation, the conditions of the certification of the lawful land use, which establishes the entitlement for support, is completely fulfilled by the landlord of our above mentioned example.