

Zsófia HORNYÁK*
Legal frame of agricultural land succession and acquisition by legal persons
in Hungary**

Abstract

The study presents the way leading to the development of the Hungarian land transaction regulation and the most important points of the new legal provisions. In the analysis, we also touch on the issue of land acquisition by legal persons. The research focused on examining the inheritance of agricultural lands. In the case of the inheritance of land, legal inheritance and inheritance by disposition of property upon death are also mentioned. Inheritance of land by disposition of property upon death is prioritised in the analysis. In addition, the issue of transfer of holding inter vivos is examined.

Keywords: land transaction; land inheritance; legal inheritance; disposition of property upon death; transfer of holding

1. Introduction

In this study, we highlight two topics. First, after the presentation of the legislative background and general rules of Hungarian land transaction, the rules pertaining to the inheritance of agricultural land are analysed. Within this scope, we emphasise the regulation of land inheritance based on the disposition of property upon death, which contains special rules. Within the framework of this section, during the introduction of the general land transaction dispositions, we also show the possibilities of acquiring ownership for legal persons. Second, the issue of the transfer of holding inter vivos is analysed.

Both topics are interesting because the Hungarian legislator is lagging behind Western European countries in the development of regulation. In most of these countries, special rules can be found for the acquisition of ownership of agricultural land through both legal inheritance and disposition of property upon death. Special rules have also been laid down for the transfer of agricultural holdings inter vivos. In these areas, the Hungarian legislator lays down special rules only for agricultural inheritance with a disposition of property upon death. In other areas, we must start from the general rules of civil law, which of course, does not consider the special nature of agricultural land and farms. From an economic viewpoint, it is necessary to embed

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these special provisions in the Hungarian legal system so that the lands and farms remain together and be subject to continuous and appropriate cultivation.

2. Specialties of the Hungarian land transaction regulation

According to the Accession Treaty (23 September 2003) and point 3 of its Annex X – on the free movement of capital^{1,2} – Hungary may maintain in force for seven years from the date of accession the prohibitions laid down in its legislation existing at the time of the signature of this Act on the acquisition of agricultural land by natural persons who are non-residents or non-citizens of Hungary and by legal persons.³ With Decision 2010/792/EU (20.12.2010), the European Committee agreed to maintain the land moratorium until 30 April 2014,⁴ at which end it was necessary to legislate a new act on land transaction in Hungary.⁵ Thus, Act CXXII of 2013 on Transactions of Agricultural and Forestry Land (hereinafter referred to as Land Transaction Act)⁶ was adopted, and entered into force on 1 May 2014.

The Land Transaction Act was the first cardinal act in this sector adopted among the others prescribed by the Fundamental Law. The partly cardinal act, Act CCXII of 2013⁷ (hereinafter referred to as Act on Land) was also adopted, which is on certain provisions and transition rules related to Act CXXII of 2013 on Transactions of Agricultural and Forestry Land. In addition, two other cardinal acts will be adopted, namely the act on agricultural holdings and on integrated agricultural production.⁸

The Land Transaction Act governs the acquisition of ownership of and usufruct rights on agricultural and forestry land (hereinafter referred to as land), use of land, and monitoring of restrictions on land acquisitions, and contains provisions on local land commissions.⁹

¹ See more: Korom 2013, 11–24.

² See more: Fodor 2010, 115–130.

³ Benedek 2005, 13.; Kurucz 2008b, 12.

⁴ Korom 2009, 7–16.; See more about the end of land moratorium: Téglási 2014, 155–175.

⁵ See more about the new Land Transaction Act: Csák 2010b, 20–31.; Csák & Hornyák 2013b, 12–17.; Csák & Szilágyi 2013, 220–224.; Jakab & Szilágyi 2013, 52–57.; Kapronczai 2013, 79–92.; Kurucz 2008a, 13–22.; Prugberger 2012, 62–65.; Szilágyi 2013, 110–111.; Vass 2003, 159–170.; Alvincz 2013.; Mikó 2013, 151–163.; Andréka 2010, 7–19.

⁶ For more about the analysis and its history, see: Csák & Hornyák 2013a, 7–10.; Csák & Prugberger 1994, 489–497.; Holló 2013, 111–140.; Hornyák 2014, 117–121.; Horváth 2013, 359–366.; Kecskés & Szécsényi 1997, 721–729.; Novotni 1992, 30–104.; Olajos 2002b, 13–17.; Olajos 2002a, 8–12.; Prugberger 1989, 609–617.; Prugberger 1990, 149–156.; Prugberger 1993, 6–14.; Prugberger 1995, 232–234.; Prugberger 1998, 276–287.; Prugberger & Olajos 1999, 165–185.; Raisz 2014, 125–142.; Tanka 2013, 109–136.; Zsohár 2013, 23–24.

⁷ Certain provisions of the act according to Fundamental Law Article P) Section (2), and other certain provisions of the act according to Fundamental Law Article 38 Section (1) are considered to be the cardinal act. Act on Land 107. §

⁸ Fundamental Law Article P) Section (2).

⁹ Land Transaction Act 1. § Section (1).

The scope of this Act shall cover the acquisition of ownership of land under any title and by any means, but not including where ownership is acquired by way of intestate succession, offer to the State in probate proceedings, through expropriation, or through auction for the purpose of indemnification.¹⁰ Thus, the scope of the Land Transaction Act does not cover the acquisition of ownership of land by way of intestate succession. Therefore, we must use the general rules of the law of succession based on the Civil Code. However, the act contains special rules for the acquisition of ownership of land by testamentary disposition.

The Act applies to all lands located in the territory of Hungary¹¹; however, the rules on agricultural holdings will be governed in a specific act, although only conceptual definitions relating to agricultural holding¹² can be found in the Land Transaction Act.

In principle, the ownership of land may be acquired by domestic natural persons and EU nationals. The Land Transaction Act introduced the concept of a farmer, and only those people who meet these criteria can take part in the domestic land market.¹³ In the case of the land acquisition limit, the size of land that can be acquired by a farmer and someone other than a farmer who is a close relative of the person transferring the ownership right of the land may not exceed 300 ha.^{14,15} Other than farmers, domestic natural persons and EU nationals may acquire the ownership of land if the size of the land does not exceed 1 ha (previously, domestic natural persons could acquire the ownership of a maximum 300 ha land¹⁶).

Currently, the ownership of agricultural land can only be acquired by certain legal persons, and they can only acquire it with special conditions. Among legal persons, ownership of land can be acquired without any restrictions by the State and with conditions by a listed church or the internal legal entities thereof under a maintenance or life-annuity agreement, an agreement for providing care, or a contract of gift, and by testamentary disposition.

¹⁰ Land Transaction Act 6. § Section (2).

¹¹ Land Transaction Act 5. § Point 17. Agricultural, forestry land: shall mean any parcel of land, irrespective of where it is located (within or outside the limits of a settlement), registered in the real estate register as cropland, vineyard, orchard, garden, meadow, permanent pasture (grassland), reed bank, or forest or woodland, including any parcel of land shown in the real estate register as non-agricultural land noted under the legal concept of land registered in the Országos Erdőállomány Adattár (National Register of Forests) as forest.

¹² Land Transaction Act 5. § Point 20. Agricultural holding: shall mean the basic organization unit of production equipment and other means of agricultural production (land, agricultural equipment, other assets) operated with the same objective, functioning also as a basic economic unit by way of economic cohesion.

¹³ Land Transaction Act 5. § Point 7. Regarding the concept of a farmer, see: Olajos 2013, 124–125.; Raisz 2017b, 72.

¹⁴ For more about exceeding the land acquisition limit, see: Hegyes 2017, 116–118.

¹⁵ According to the Land Transaction Act 5. § Point 13, close relative shall mean spouses, next of kin, adopted children, stepchildren, foster children, adoptive parents, stepparents, foster parents, and siblings.

¹⁶ Csák 2010a, 104–105.

Ownership of land may also be acquired by a mortgage loan company, but only subject to the limits and for the duration provided for in the Act on Mortgage Loan Companies and Mortgage Bonds.¹⁷ It can also be acquired by the municipal government of the community where the land is located for the implementation of public benefit employment programs and social land programs, for urban development purposes, and if the land is a protected site of local importance to protect the land under the Act on Protection of the Natural Environment.¹⁸ A further favourable rule for these legal persons is that the rule of the land acquisition limit, land possession limit, and preferential land possession limit shall not be applied to them.¹⁹ In addition, other legal persons, third-country natural persons, and foreign states (including their provinces, local authorities, and the bodies thereof) may not acquire ownership of the land.

Ownership acquisition rights shall exist on condition that the acquiring party undertakes in the contract for the transfer of ownership not to permit third-party use of the land, and to use the land himself, and in that context, to fulfil the obligation of land use. The party further agrees not to use the land for other purposes for a period of five years from the time of acquisition. In addition, ownership acquisition rights shall exist on condition that the acquiring party provides a statement enclosed with the contract for the transfer of ownership of having no outstanding fee or other debt owed in connection with land use, as established by final ruling relating to any previous land use. Moreover, the party must not have been found to be involved during the period of five years before the acquisition in any transaction aiming to circumvent restrictions on land acquisitions.²⁰

In the case of a land transaction between living persons,²¹ the approval of the competent authority, as a public law tool, is a special regulatory instrument. We highlight the pre-emption rights as a civil law tool.

Transactions in the case of land acquisition can be classified into three groups in respect of approval of the competent authority. The first group includes the acquisition of ownership of land by sales contract. The second group includes the acquisition of ownership of land under other titles, and the third group consists of land acquisition for which the approval of the competent authority is not required. In the case of the approval of the sales contract by the competent authority, the sales contract shall be communicated to the holders of pre-emption rights by way of public notice through the notary.

¹⁷ Act XXX of 1997 on the mortgage credit institution and mortgage 10. § (4) Real estate qualifying as agricultural and forestry land according to the Act on the Transactions of Agricultural and Forestry Land can become the ownership of a mortgage credit institution only temporarily for a maximum period of one year from the date of acquisition through liquidation or enforcement proceedings.

¹⁸ Land Transaction Act 11. § (1) and (2).

¹⁹ Land Transaction Act 16. § (7).

²⁰ See for more: Csák & Hornyák 2013b, 12–17.; Csák & Hornyák 2013a, 7–10.

²¹ See for more: Andréka & Olajos 2017, 410–424.; Szilágyi et al. 2019, 40–50.; Raisz 2017a, 434–443.; Szilágyi 2018, 182–196.

The agricultural administration body shall then check and examine the sales contract and statement of acceptance, and adopt a decision within 15 days of receipt of the documents for the refusal of approval of the contract of sale if one of the cases listed in the act occurs. If the agricultural administration body decided not to refuse the approval of the sales contract, it shall contact the regional body of the Magyar Agrár-, Élelmiszergazdasági és Vidékfejlesztési Kamara (Hungarian Association of Agriculture, Food, and Rural Development) where the land affected by the contract is situated, namely the local land commission, to make its opinion. The local land commission shall consider the local situation, public knowledge, and criteria specified in the act. Based on these criteria, the local land commission shall formulate its opinion whether to support the approval of the sales contract of the holders of pre-emption rights listed in the protocol or the buyer. The agricultural administration body shall consider the opinion of the local land commission in its decision, consider again the conditions of approval or refusal of the sales contract, and shall make its resolution, which shall be endorsed.

3. Special rules relating to agricultural inheritance – disposition of property upon death

In the case of a disposition of property upon death, the same restrictions shall be applied to the acquisition of ownership of land as to other acquisitions of ownership falling within the scope of the Land Transaction Act. In the case of a disposition of property upon death, a situation can easily occur that a person who cannot be qualified as a farmer²² will be named as an heir by the testator. However, for them, the legislator has set a strong limit on the size of the area that can be acquired.²³ As a general rule, a non-agricultural resident natural person and national of a Member State can acquire ownership of land if the size of the land in his possession, including the size of the land to be acquired, does not exceed 1 ha. An exception to this is when a non-farmer resident natural person or national of a Member State is a close relative of the person transferring the ownership.²⁴ In the case of close relatives who cannot be qualified as farmers, the general land acquisition limit applicable to farmers must be considered so they can acquire the ownership of agricultural land up to 300 ha.²⁵ Of course, in the case of a testamentary disposition, these limits must also be considered and the land acquisition limit of 1 ha, or where applicable, 300 ha, may not exceed the total area of all land owned by the heir, so pre-existing and inherited land.

²² For more regarding who qualifies as a farmer, see: Olajos 2013, 121–135.; Raisz 2014, 125–142.; Szilágyi 2015, 44–50.

²³ See for more: Szilágyi 2013, 110–111.

²⁴ Land Transaction Act 10. § (2), (3).

²⁵ Land Transaction Act 16. § (1).

In the case of a disposition of property upon death on land ownership, the approval of the agricultural administration body is also required.²⁶ Therefore, the testamentary heir – only in the case that s(he) would not be the legal heir of the testator in the absence of a will – who is the contractual heir named in the agreements as to succession, and the donee of the testamentary gift contract can acquire ownership of the land only with the approval of the authority.²⁷

Regarding the approval of acquisitions of land by way of testamentary disposition, the provisions on pre-emption rights, holders of pre-emption rights, on statements of acceptance made by holders of pre-emption rights, on the protocol and the owners' right to choose, and on the related designations to be made by the agricultural administration body shall be ignored. Another difference to the approval of the sale contract by the competent authority²⁸ is that in these proceedings, the opinion of the local land commission is not necessary.

The agricultural administration body shall consider the eligibility of the heir and whether testamentary disposition is predisposed to breach or circumvent restrictions on land acquisitions. The agricultural administration body shall communicate the decision to the public notary as well.

In the case of the acquisition of land ownership with a disposition of property upon death, certain special rules shall also be applied in the proceedings. The public notary can contact the agricultural administration body without sending the disposition of property upon death. In this case, the public notary's request must contain the information available to the public notary on the heir in respect of the land affected by the disposition of property upon death.²⁹ The procedure begins on the day following the receipt of the public notary's request to the agricultural administration body.³⁰ The agricultural administration body shall also examine whether the transfer of the estate would not result in a breach or circumvention of the restriction on the acquisition of ownership.

If the agricultural administration body refuses to approve the acquisition of title by the heir, and the land in question is transferred under State ownership and assigned to the National Land Fund, the heir shall be entitled to compensation. The amount of compensation shall cover the value established by the appraisal of the property, minus the estate debt falling upon the State, as the heir. The person exercising ownership rights shall make provisions about preparing the appraisal and payment of compensation within 60 days from the date of acquisition. This disposition shall not be applied if the ownership acquisition of the State occurred because the heir disclaimed the inheritance. This provision was entered into the law based on decision No 24 of 2017 of the Constitutional Court.

²⁶ Land Transaction Act 7. § (1).

²⁷ Orosz 2015, 75.

²⁸ For more about the approval of the authority, see: Jani 2013, 15–28.

²⁹ Identity data, citizenship, address.

³⁰ Act CCXII of 2013 on certain provisions and transition rules related to Act CXXII of 2013 on Transactions of Agricultural and Forestry Land 41. §

The special rules on the disposition of property upon death are fundamentally applicable to the inheritance of land as the scope of the act extends to land. A special rule is included in the general inheritance rules of the Civil Code, which applies specifically to agricultural holdings, in connection with the disclaimer of inheritance. Based on this, the heir shall be entitled to separately disclaim inheritance of a farmland, its equipment, accessories, livestock, and tools and implements if he is not engaged in agricultural production by profession. With this rule, the Act provides the opportunity that a successor who is engaged in agricultural production by profession can possibly receive the agricultural land and adherent instruments. This rule was considered favourable anyway, because according to the main rule, the successor can refuse the estate only as a whole, and only by the abovementioned inheritance assets can be disclaimed separately by the successor.

In the current regulation, we mention the providing of statements necessary for the acquisition of ownership, the land acquisition limit, and institution of the approval by the competent authority as the limitation of the freedom of testamentary disposition. The acquisition of ownership based on a disposition of property upon death also requires declarations from the acquirer.³¹ The question arises as to the justification for making such declarations in the case of a disposition of property upon death, since if the acquisition of ownership by inheritance is made conditional, if the heir does not do so, he cannot acquire ownership of the land, which is contrary to the will of the testator and thus a barrier to freedom of will.

The rules in force since 2014 mainly restrict the freedom of choice of the subject and freedom of content. The declarations to be made by the transferee as the conditions of the acquisition of ownership will restrict the testator's free choice of subject, because if the named heir cannot make the necessary declarations, the authority will not give the required approval. Thus, the heir in the disposition of property upon death cannot inherit the land.

In addition to the freedom of choice of subject, the land acquisition limit also restricts the freedom of content, as the testator can only benefit the person whose land, together with the land he or she already owns, does not exceed the maximum according to law. However, the testator has the option of leaving his lands to his heir in such a way that the size of the lands owned by the heir remains within the land acquisition limit. This can, however, mean restricting the freedom of content if for example, the testator's will originally intended to become the ownership of the testamentary heir of all his lands, but for this reason, he will leave only a certain portion of his lands to the named heir.

The authority's approval is also a restriction on both directions of the freedom of testamentary disposition, because the agricultural administration body examines each named heir to confirm whether the conditions of the acquisition of ownership are met. If it considers that one of the heirs cannot fulfil the conditions, the authority will not approve the acquisition of ownership in respect of that named heir.

³¹ See for more: Csák & Hornyák 2013b, 12–17.; Csák & Hornyák 2013a, 7–10.

Since the aim of the legislator with the enactment of the Land Transaction Act in 2013 was to acquire ownership of the land by a person who is able and willing to cultivate it,³² it is fully compatible with the purpose of enacting the law that even in the case of the acquisition of ownership by a disposition of property upon death, the legal restrictions must be complied with. If a disposition of property upon death were not subject to the restrictions set out above, the strict rules of the Land Transaction Act on the acquisition of ownership by contract of sale could be easily circumvented. However, another important principle is that of the freedom of testamentary disposition. The question is which principle shall we put before the other. Which principle is more important? The *'let the land belong to him who is able to cultivate it'* introduced into the agricultural land circulation by the legislator, or the freedom of testamentary disposition in the Civil Code, which is the basis of the right of inheritance? The former principle was intended as a guideline by the legislator, but is reinforced by purposes of the property policy set out in the preamble of the Land Transaction Act to which certain provisions of the Land Transaction Act have been subordinated. Based on this, the Land Transaction Act should serve to suppress the access of non-farmers to land and to eliminate speculation.³³ In contrast, the principle of freedom of testamentary disposition, which derives from the freedom of disposition of the owner, can be seen as a universal principle of legal systems based on civil private property³⁴ and has been part of our legal system since 1715.³⁵

Our proposal would be to amend the regulation by disposition of property upon death – in the present case, the disposition of property upon death is expressly meant by a will – to allow the named heir to meet the conditions of the Land Transaction Act within a specified period, so that the applicability of the will of the testator would depend on the heir's decision. This would only be possible on the basis of a will, since the unilateral declaration of the rights of the testator, the content of which can only be known to the heirs only after the testator's death, in the probate proceedings is therefore not known or certain to inherit.

In the regulation of land circulation, the legislator treats the inheritance based on a disposition of property upon death and inheritance based on legal succession differently. The acquisition of ownership of land by way of disposition of property upon death falls within the scope of the Land Transaction Act. Thus, the legislator sets special rules for this, but removes the legal succession from the scope of the act. Therefore, we apply the general rules to them. Assuming that the restriction of the right to property and right to inheritance is due to the enforcement of property policy principles, and the main consideration in the regulation is the preference for the acquisition of ownership by the farmer, then the different regulation of legal inheritance compared to succession based on disposition of property upon death is not acceptable.

³² The debate on the new land act pp. 8.

³³ The debate on the new land act pp. 8.

³⁴ Anka 2014b, 436.

³⁵ Act XXVII of 1715 on wills abolished the principle that only a will that provides for the entire estate of the testator is valid. See: Teller 1939, 228.

After all, in the case of legal inheritance, the heir shall not meet any special conditions based on property policy principles, but in the case of a disposition of property upon death, the condition for the acquisition of ownership is compliance with the conditions specified in the Land Transaction Act. The only reason for this can be that the legislator had in mind the prevention of speculative land acquisition, which we cannot talk about in the case of legal inheritance. As such, its restriction is not justified in this respect. However, in the case that inheritance based on disposition of property upon death is possible, it is necessary to make the acquisition of ownership conditional under this title.

However, it would be worthwhile to consider the objectives of the property policy and keep them in mind when laying down the rules in the case of legal inheritance as well. In addition, the specific nature of agricultural land should be considered in the regulation of legal inheritance, and the restrictions on land acquisition should be applied in this process – of course adapted to the rules of legal inheritance. We recommend that this shall be ensured by placing forward the person bound to the land – the farmer in this case – in the order of succession by following the examples of the legal regulations of Western European countries. These special rules could be developed either in the future act on agricultural holdings or possibly in a land inheritance act.

4. Transfer of holding inter vivos

The Hungarian legislator is lagging behind Western European countries in relation to the development of rules on the transfer of holding inter vivos, because in those countries, there is a special solution and regulation in the agricultural law for this situation. Legislation on agricultural holdings, which is a cardinal act under Article P) of the Fundamental Law, has not yet been created, and currently, the Land Transaction Act, the only one of the legal acts prescribed for the area by the Fundamental Law, does not contain a special rule in this regard. In Western European countries, the contract for the transfer of the holding is found, and the main aim is to keep it together. In the absence of special regulations, we can proceed from the provisions of the Civil Code (Act V of 2013). The option regulated by the Civil Code is the transfer of fiduciary assets. Under a fiduciary asset management contract the fiduciary (recipient of the holding) undertakes to manage the assets, rights, and receivables entrusted to him by the principal (transmitter of the holding) in his own name and on the beneficiary's behalf, and the principal undertakes to pay the fee agreed upon. Thus, the agricultural holding becomes the property of the fiduciary, which operates it for a fee in its own name but for the benefit of the named beneficiary. The beneficiary may request from the fiduciary the release of the holding and its benefits in accordance with the provisions of the contract. The holding thus taken over is separate from the fiduciary's own assets and is not part of his legacy. However, under the provision of the Land Transaction Act introduced on 1 July 2020, ownership of land may not be acquired by way of a fiduciary asset management contract. Therefore, we cannot find regulations on the transfer of holding inter vivos in the present Hungarian legal system.

5. Closing thoughts

We consider that specific rules of land succession shall be adopted within the national legislation. The reason on one hand is to eliminate the fragmentation of estate structure, while using the general rules of succession for intestate succession lands may be easily fragmented. The purpose of introducing *sui generis* rules of land succession would be to hold the land as a unit. On the other hand, it should be considered during the establishment of rules – which is not considered by the general rules of succession – that such a person shall be the heir who is competent, has special skills, and has practice in land cultivation. This would ensure the land is properly farmed. There are special rules for the acquisition of ownership of land by testamentary disposition.³⁶ Therefore, in this case, the special nature of land was considered during the establishment of regulation. It would be worthwhile approaching the rules of intestate succession to this. In addition, the purpose of the principles behind the land transaction is to promote acquisition by those people who are able and willing to cultivate the land, but it is not provided in the case of using the general rules for intestate succession. The provision of testamentary disposition should be reconsidered to avoid a chance of speculative land acquisition, and specific rules should be established in one system for both intestate succession and testamentary disposition.³⁷

³⁶ See for more: Olajos, Csák & Hornyák 2018, 5–19.

³⁷ See for more Hornyák 2019.; Hornyák 2018, 107–131.

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